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**Democratic Capitalism in the United States**

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**Democratic Capitalism in the United States**

**by**

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**Dissertation**

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# **Democratic Capitalism in the United States**

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Though democracy and capitalism are both central to American identity, they admit of a deep and often unnoticed philosophical contradiction. The capitalist ideal of the distribution of goods through market mechanisms is incompatible with the democratic notion that the will of the people, as expressed through the political process, should carry the day. Yet the history of the simultaneous affirmation of these ideas in the United States reveals widespread prosperity, relative stability and broad assent. In order to address the divergence between theory and practice in this area, this dissertation offers a new theoretical and historical understanding of American democratic capitalism.

Applying the American pragmatism of philosopher Richard Rorty to the problem of democratic capitalism yields the conclusion that its solution is to be found not in a philosophical analysis of the meanings of its component terms, but in an historical investigation of their construction. Such an examination reveals that Americans of different historical periods have expressed substantially dissimilar economic and political requirements, and the nation's democratic capitalism should not be understood as a seamless celebration of political and economic freedom. Instead, it is a uniquely

democratic project in which the people retain onto themselves the prerogative of defining the parameters of economic success.

From one era to another, a country's citizenry can hold varied expectations of its economy—from providing jobs to winning wars. Harnessing the nation's production and distribution to specific projects, however, often compromises the commercial freedom that is the hallmark of the market system. In the face of these continually shifting economic goals, the nation's political thinkers have generally sought to adapt the meaning of capitalism to the exigencies of the day, rather than reject the doctrine entirely. Thus the intellectual history of democratic capitalism in the United States is one of continual reformulation. Considering three case studies in which political thinkers or actors have, in response to the national mood, articulated or re-imagined the function of the nation's economy, the dissertation argues that U.S. political economy, at both the theoretical and historical level, has been more democratic than capitalist.

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## **Chapter One: Democracy and Capitalism**

### **“A LAWYER FOR CAPITALISM”**

At the height of the Cold War, the vice president of the United States found himself in Moscow’s Sokolniki Park, standing inside a California-style kitchen while heatedly debating the merits of capitalism with Soviet Premier Nikita Khrushchev. Richard Nixon’s eleven-day visit to the Soviet Union during the summer of 1959 had been intended as a gesture of goodwill between the rival nations; the meeting instead degenerated into a series of what *The New York Times* labeled “gibes” between the countries’ representatives. The most memorable of these exchanges took place on July 24, during a tour of the brand-new U.S. Trade and Cultural Fair, which included a model home full of the latest American technological consumer gadgets. After the briefest exchange of pleasantries (which included Nixon speaking in Russian), Khrushchev began complaining that the press of the United States edited and mistranslated his remarks. The American assured him of the openness of his country’s journalism, and requested a guarantee that his own remarks would be translated and unexpurgated on Soviet TV, urging that the Russians “must not be afraid of ideas.” When Khrushchev retorted that those who feared ideas were actually the Americans, the vice-president responded by proposing “an exchange of them.” Noting his counterpart’s legal background, Khrushchev replied, “You are a lawyer for capitalism and I am a lawyer for communism. Let’s compete.”

The rhetorical “competition” that ensued revealed a great deal about the relationship between the government of the United States, personified by Nixon, and the capitalist economic system that the vice president defended that day. While Nixon praised the technological advances fostered by capitalism, as embodied in the television

sets and automatic floor sweepers on display in the model home, Khrushchev could muster only disgust at the decadence these things represented. “Many things you’ve shown us are interesting but they are not needed in life. They have no useful purpose.” Immediately contradicting himself with the implausible claim that Soviet homes possess the same amenities, the premier quickly returned to the fundamental philosophical difference between the two leaders and their respective economic systems. “Moreover, all you have to do [here] to get a house is to be born in the Soviet Union. You are entitled to housing. I was born in the Soviet Union. So I have a right to a house. In America if you don’t have a dollar—you have the right [sic – “no right”?] to choose between sleeping in a house or on the pavement. Yet you say that we are slaves of communism.”

Nixon was more interested in proclaiming his system’s virtues than in rebutting its critics; if he saw any merit to Khrushchev’s objection, he did not acknowledge it. Instead, the vice president returned to the theme of the advantages of capitalism. “To us, diversity, the right to choose, the fact that we have 1,000 builders building 1,000 different houses, is the most important thing. We don’t have one decision made at the top by one government official. This is the difference.”<sup>1</sup>

The “kitchen debate” has since been accorded the status of a prominent event in the history of the Cold War, one of the few moments in which the ideological adversaries specifically addressed their philosophical, rather than geopolitical, differences. Yet one might ask how it is that Nixon and Khrushchev settled upon capitalism as representative of the American social philosophy. As the vice president, Nixon was serving in a political capacity, not an economic one. And capitalism, after all, enjoys no legal mandate from the Federal government of the United States. Yet the two debaters did not choose arbitrarily, or even incorrectly; foolish it would be to deny that capitalism is

afforded a privileged, if unofficial, status among American intellectual worldviews. Any objection Nixon might have offered to being labeled a “lawyer for capitalism” would have constituted disingenuousness; any failure to champion the system, incompetence.

Of course this relationship between capitalism and government did not start or end with Richard Nixon. The widespread influence and implementation of capitalism in the United States is such that the identification of that nation with its economic philosophy has hardly been limited to the kitchen debate. Yet alongside the growth of capitalism in the United States has been the increasing influence of an equally important intellectual and political touchstone: democracy. Barely fifty years after the young nation had drafted its constitution, Alexis de Tocqueville would note that “[t]he social state of the Americans is eminently democratic,” while at the same time claiming to “know no other country where love of money has such a grip on men’s hearts or where stronger scorn is expressed for the idea of permanent equality of property.”<sup>2</sup> Almost two hundred years later, the Frenchman’s observations are, if anything, even more true: democracy and capitalism represent two of the most influential intellectual traditions in American life.\*

But the widespread appeal for Americans of both these systems belies a fundamental reality: the democratic theory that provides the foundation of American government is difficult to square with the capitalist philosophy animating the nation’s economy. Government regulation of commerce—no matter how democratically it may be realized—inevitably privileges some economic actors over others, which violates the free-market ideals of capitalism. Alternatively, the economic inequality that is a

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\* In fact, I would go so far as to argue there are only *three* intellectual outlooks with this sort of influence; the other being the Judeo-Christian religious tradition. Max Weber, of course, has juxtaposed the latter with capitalism in his insightful and influential *The Protestant Ethic and the Spirit of Capitalism*.

necessary corollary of capitalism renders meaningless the bedrock democratic principle of “one person-one vote.” Thus democracy and capitalism exhibit a philosophical tension that might well be irreconcilable.

But this theoretical objection is complicated by historical fact: the United States has instituted some version of democracy and capitalism, with fairly stable results, for well over two hundred years. Presumably, then, Americans have made some adjustments to democracy and/or capitalism to enable the systems to work together successfully. If so, then what system of political economy is the real one under which we actually live?

I will argue here that the full exercise of capitalism is necessarily hampered in a democracy, and vice versa. Moreover, this incompatibility is not an accident of history, but an inevitable consequence of the theoretical constructions of each system. Their inherent tensions render incoherent any description of democratic capitalism that rests upon the assumption that a capitalist economic system can proceed unfettered alongside an equally effective democratic political one. Instead, I will propose another model of democratic capitalism, one in which capitalism exists only as another democratic project—one with special claims to our attention, perhaps, but not one whose ideological demands are on a par with those of democracy itself.

## **WHAT IS CAPITALISM REALLY?**

Perhaps the most succinct and effective articulation of American capitalism’s articles of faith are to be found in Leonard Read’s short article, “I, Pencil.” Written in 1958 by the president of the libertarian Foundation for Economic Education and published in that organization’s monthly magazine *The Freeman*, “I, Pencil” was intended to provide a simple and tangible argument for the virtues of the free market and entrepreneurialism. The work unsurprisingly exhibits the slightest tinge of anti-communist hyperbole, but decades after the end of the Cold War, the work is still

considered, in the words of Nobel Prize-winning economist Milton Friedman, “a classic, and deservedly so.”<sup>3</sup>

“I, Pencil” is written in the first-person, from the standpoint of the titular writing implement. The pencil tells the story of its “family tree” in order to impress upon the reader the multitude of tasks required in order to produce one fairly simple object. Beginning from its days as a tree in a California forest, the pencil describes all the people and jobs required merely to complete the necessary first step of harvesting wood. “Now contemplate all the saws and trucks and rope and the countless other gear used in harvesting and carting the cedar logs to the railroad siding. Think of all the persons and the numberless skills that went into their fabrication: the mining of ore, the making of steel and its refinement into saws, axes, motors; the growing of hemp and bringing it through all the stages of heavy and strong rope; the logging camps with their beds and mess halls, the cookery and the raising of all the foods.”<sup>4</sup>

From there, it lists dozens of people who are responsible for turning those trees into pencils: there are those who cut the wood, provide the electricity, drive the trucks, determine the chemical makeup of various pencil compounds like paint and lacquer, mine the graphite “lead” and so on. The pencil’s immediate point is to emphasize the dizzying scale involved in the manufacture of even the most simple objects.

[M]illions of human beings have had a hand in my creation, no one of which even knows more than a very few of the others...There isn’t a single person in all these millions, including the president of the pencil company, who contributes more than a tiny, infinitesimal bit of know-how. From the standpoint of know-how the only difference between the miner of graphite in Ceylon [now Sri Lanka] and the logger in Oregon is in the *type* of know-how. Neither the miner nor the logger can be dispensed with, any more than can the chemist at the factory or the worker in the oil field—paraffin [used to treat the lead] being a by-product of petroleum.<sup>5</sup>

Once having impressed upon the reader the seemingly infinite number of people and tasks involved in the creation of a pencil, Read has arrived at the central point of his argument. Though such a tremendous undertaking might otherwise require massive amounts of coordination, the pencil points out that allowing people to pursue their own self-interest will create more, better and cheaper pencils than any administrative alternative.

Here is an astounding fact: Neither the worker in the oil field nor the chemist nor the digger of graphite or clay nor any who mans or makes the ships or trains or trucks nor the one who runs the machine that does the knurling on my bit of metal nor the president of the company performs his singular task because he wants me. Each one wants me less, perhaps, than does a child in the first grade...Each of these millions sees that he can thus exchange his tiny know-how for the goods and services he needs or wants. I may or may not be among these items.<sup>6</sup>

Thus loggers, chemists and corporate executives put their skills to work making pencils not because they want or need them. Instead, at every stage of manufacture and distribution, the people who do want pencils are willing to offer these workers more opportunities to pursue their own personal desires (i.e., money) than others who might prefer to see their talents go toward the process of making, for example, computers or cars. As such, the mechanism of self-interested exchange of goods, labor and expertise provides the best possible coordination of economic resources, without the need for anyone to actually perform this function.

The argument advanced in “I, Pencil,” is but an update of the general conception of economic life laid down by Adam Smith in his 1776 classic *The Wealth of Nations*. Though primarily aimed at refuting the no-longer-relevant economic doctrine of mercantilism, *The Wealth of Nations* still carries tremendous authority as the foundational text of modern capitalism. The work is based upon two basic premises. The first is that

the driving force behind economic life is self-interest. Just like Read's pencil-makers, the workers in Smith's day exerted their energy only so as to obtain things that they want.

It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity, but to their self-love, and never talk to them of our own necessities but of their advantages.<sup>7</sup>

In the face of the limited resources that characterize human experience, one might think that the pursuit of self-interest would set each person against the other. But Smith argues that this is not the case, since the division of labor allows each worker to produce more than he/she can use. Once possessed of these surplus products, the worker can exchange them for the excess goods of another. Since neither party will make the exchange unless he/she prefers the new goods to the ones he/she already has, the act of trading channels self-interested motivations into situations of mutual advantage.

Thus the second major premise of *The Wealth of Nations* is that this same self-interest, though the mechanism of trade, can achieve social, and not only selfish, ends. The most famous passage in the book is devoted to this point.

Every individual...endeavours [sic] as much as he can both to employ his capital in the support of domestic industry, and so to direct that industry that its produce may be of the greatest value: every individual necessarily labours to render the annual revenue of the society as great as he can. He generally, indeed, neither intends to promote the public interest, nor knows how much he is promoting it...[B]y directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it.<sup>8</sup>

The "invisible hand" ensures that the common good will emerge from the flourishing of individual initiative. With this famous phrase Smith referred to economic competition. A seller whose self-interest leads her to set a price far above what it costs to produce the



good in question will find that other sellers' self-interest can be served by making the same good and selling it more cheaply, thus luring away all the equally self-interested prospective buyers. Similarly, if many people have a strong desire for a given good, then they will be willing to pay more for it, and more sellers will produce a greater quantity of the good. In this way, both the price and the availability of the good will eventually stabilize at amounts that will satisfy as many people as possible, given any specific set of preferences.

The free interactions of buyers and sellers of a single good describe what is more commonly referred to as a "market." A shorthand way of stating the core conclusions of *The Wealth of Nations*, and one of the significant premises of capitalism, is that the best interests of society at large are served by allowing ownership of goods to be determined by the actions of the market.\* A corollary of this view is that any limitation of the economic freedom of individual actors, by, say, unfair competitive practices or government regulation, will lead to some people not getting a desired good they would have been otherwise been able to obtain. These "market inefficiencies" represent a diminishing of the overall good. Respect for the freedom of the individual to pursue his/her own economic interest is therefore a cardinal principle of capitalism; the concluding moral of "I, Pencil"—expressed under the heading "Leave Men Free"—makes this point abundantly clear. "The lesson I have to teach is this: *Leave all creative energies uninhibited.*"<sup>9</sup>

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\* With regard to the market "determining" various holdings, Robert Nozick was technically correct to argue in *Anarchy, State and Utopia* that a "market distribution" is no distribution at all, and that such language subtly legitimates collectivist approaches to distributive justice. But since this particular dispute is not central to the dissertation, and I have no alternative terminology at hand, I shall continue to use similar phrases. See Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), 149, 59-60.

As I have used the word “capitalism” here, it refers primarily to a system of thought. Unfortunately for the purposes of clarity, the same word also commonly describes an economic system that the identically-named intellectual worldview is often cited to justify, one that prominently features the institution of property, prices set by markets, the private corporation, entrepreneurialism, the hiring-out of labor, and, of course, the need for and legitimation of capital. Though the relationship between the intellectual and economic manifestations of capitalism is an intimate one, this dissertation is concerned primarily with the former. As such, capitalism can be described for our purposes as the belief in two core principles: that the individual human being has an inviolable right to possess and exchange private property, and that the common good is most effectively satisfied through the doings of the market.\*

Using this definition of capitalism, it is clear that the United States has seen no serious threat to that system’s hegemony. No other economic approach, such as feudalism, socialism or colonialism, has achieved more than token support here. The question under consideration, however, is not whether capitalism is popular, innovative or productive of happiness. It is the extent to which that approach to economics is compatible with a democratic political orientation. Thus democracy is our next subject of concern.

## **THE ESSENTIAL TENSION OF AMERICAN DEMOCRACY**

The literal meaning of the ancient Greek word “democracy” is “rule by the people.” Though this definition is helpful in distinguishing democracy from systems that

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\* These two premises can be viewed either as logically independent of one another, or in such a way that the first is derived from the second. In the latter scheme, it is at least theoretically possible that the goal of freedom could contradict that of an ideal distribution of goods—if it were proven, for example, that the market did not actually produce these results. Since nearly all who hold one of these premises also affirm the other, such a concern can be merely academic. But it is nonetheless an interesting question to ask whether it is freedom or the ideal aggregate utility that is most essential to capitalist thought.

would delegate political power to, say, some monarch, army or deity, it does little to explain exactly how it is supposed to work. For if the people rule, who, if anyone, serves? And if, as a practical matter, only *some* of the people rule, then to what extent is such an arrangement democratic at all?

Both popularly and among serious political thinkers, democracy is often identified with majority rule. In his first inaugural address, Thomas Jefferson invoked a “sacred principle” that “the will of the majority is in all cases to prevail;”<sup>10</sup> Tocqueville would later find that “[t]he absolute sovereignty of the will of the majority is the essence of democratic government.”<sup>11</sup> Common as this idea may be, it is nonetheless mistaken. “[S]o far as I am aware,” writes democratic theorist Robert Dahl, “no one has ever advocated, and no one except its enemies has ever defined democracy to mean, that a majority would or should do anything it felt an impulse to do. Every advocate of democracy of whom I am aware, and every friendly definition of it, includes the idea of restraints on majorities.”<sup>12</sup>

Though advocates of democracy insist that its precepts do *not* imply majority rule, critics have consistently expressed objections to democracy’s perceived tendency in that direction. Perhaps most influentially, English philosopher John Stuart Mill echoed Tocqueville’s concern over the “tyranny of the majority,” as early as 1859. Though the American and French revolutions offered a great promise of human emancipation, he argued, the practice of democratic governance brought with it some very real problems.

[S]uch phrases as “self-government,” and “the power of the people over themselves,” do not express the true state of the case. The “people” who exercise the power are not always the same people with those over whom it is exercised; and the “self-government” spoken of is not the government of each by himself, but of each by all the rest. The will of the people, moreover, practically means the will of the most numerous or the most active *part* of the people; the majority, or those who succeed in making themselves accepted as the majority; the people, consequently, *may* desire

to oppress a part of their number; and precautions are as much needed against this as against any other abuse of power.<sup>13</sup>

Objections along these lines are not alien to democratic theory; in fact, they are a prominent aspect of it. Much of the philosophy of democracy is concerned with the problem of avoiding this tyranny of the majority, a polite term for “mob rule.” In a strict sense, though, a sufficiently large mob *is* “the people” that democracy seeks to empower. Thus democratic theory is characterized by a constant tension between a mandate to liberate the people and a contradictory urge to check its power. For that reason, democracy, even as an abstract ideal, is difficult if not impossible to fully describe theoretically. Democratic theorists, however, see their difficulty in defining the system as not a commentary on their intellect or ability, but a reflection of social reality: democratic political institutions are charged with a Sisyphean task of imposing political order on the complex, contradictory and even irrational behavior and desires of human beings. “Perfect democracy,” writes political scientist Ralph Mueller, “is an oxymoron, and the undisciplined, chaotic, and essentially unequal interplay of ‘special interests’ is democracy’s whole *point*.”<sup>14</sup>

Though democracy in the United States admits of no easy definition, the thought of James Madison nonetheless offers a great deal of insight into its goals and assumptions. The foundational *Federalist Number 10* offers Madison’s account of the self-interested and discordant nature of political life.

Complaints are every where heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty; that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party; but by the superior force of an interested and over-bearing majority...These must be chiefly, if not wholly, effects of the unsteadiness and injustice, with which a factious spirit has tainted our public administrations. By a faction I understand a number of citizens, whether

amounting to a minority or a majority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.<sup>15</sup>

*Federalist 10* articulates a vision of society in which its division into rival parties is an inevitable byproduct of human nature. When designing a democratic political system to govern over this unruly and disparate bunch, then, this “factious spirit” presents the primary theoretical hurdle. Since factions inevitably emerge whenever human beings are allowed to form them, the only possibility of their elimination would require a significant limitation of freedom. Madison’s first response, then, is to toy with the idea of using the power of government to rid the body politic of factions entirely. In other words, he considers the possibility of a non-democratic government—one with enough power to simply forbid the kind of self-interested agitation that motivates political discord. Madison, in quickly discarding this solution, finds it “worse than the disease. Liberty is to faction what air is to fire, an ailment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.”<sup>16</sup>

Rejecting anti-democratic governance, and reluctantly accepting the inevitability of factions, Madison argues that a well-designed government must limit itself to containing the damage that can result from factious behavior, as opposed to the contesting the existence of the factions themselves. The best government for such a task, he claims, is one that he called “Republican,” but which today would go by the name of “representative democracy.” Considering the easy case first, in which the majority of citizens oppose the ideas or proposals of a particular faction, he notes that under such political arrangements, the minority can simply be voted down. “If a faction consists of

less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by a regular vote.”<sup>17</sup> Up to this point, then, “the rule of the people” differs little from majority rule. But with this example Madison has, of course, cooked the books; the truly important question is the one that Tocqueville and Mill would begin posing in only a few decades. What sense can be made of a democracy that is charged with the responsibility of containing the negative effects of factions, in cases in which it is the *majority* who puts its own interests ahead of those of the people?

Madison’s concern again emphasizes the point that democracy, even in the early days of the American republic, was never understood simply as majority rule. If it were, then the notion of a faction of more than half the population would be nonsensical. Intellectual historian Daniel Howe makes it clear that “[f]action’ was not a value-free concept for Publius [the pseudonym shared by the three authors of *The Federalist Papers*]; a faction was by definition evil. The idea of inevitable evil in human nature did not surprise men who were well acquainted with the Christian doctrine of original sin.”<sup>18</sup> The fact that a majority faction, in this negative sense, is both comprehensible and problematic, raises a challenge for Madison’s republic: how can stifling the will of the majority be done in a “democratic” way? This challenge prompts Madison to explain and defend in Federalist 10 an increasingly sophisticated conception of democracy. That idea, enshrined in the U.S. Constitution, has since become known as “Federalism.” Under its tenets, smaller governmental units such as states are not merely departments or divisions of the national (or “Federal”) government, but instead constitute a parallel system of political powers and responsibilities.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States: a religious sect, may degenerate into a political faction in a particular part of the Confederacy; but the variety of sects dispersed over the entire face of it, must secure the national councils

against any danger from that source: a rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union, than a particular member of it.<sup>19</sup>

In this way, power is widely dispersed so that any popular faction will have to win over not just one majority, but, in essence, a majority of majorities. The combination of Federalism with legislative representation provides ample opportunities to “refine and enlarge the public views, by passing them through the medium of a chosen body of citizens.”<sup>20</sup> Federalism, in Madison’s view, would not only place roadblocks in the path of factious proposals, but would also provide conditions under which those who subscribe to pernicious ideas might be persuaded otherwise by the clear light of reason.

A similar argument characterizes Madison’s defense of what have come to be known as “checks and balances.” Congress is the most directly representative branch of the Federal government, and therefore the one most likely to be carried away by the factional moods of the citizenry. One important purpose of its bicameral design is thus to provide incentive for each house to place limits on the other’s ability to respond to direct pressure from the populace. Furthermore, in *Federalist 51* Madison argues that *every* branch of government must possess its own institutional prerogatives, any of which are in danger of infringement by the others. In this way, he argues, no one arm of the government will become powerful enough to dominate the people themselves.

[T]he great security against the gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others...Ambition must be made to counteract ambition. The interests of the man must be connected to the constitutional rights of the place...If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controuls [sic] on government would be necessary. In framing a government that is to be administered by men over men, the great difficulty lies in this: You must first enable government to controul [sic]

the governed; and in the next place, oblige it to controul [sic] itself. A dependence on the people is no doubt the primary controul [sic] on the government, but experience has taught mankind the necessity of auxiliary precautions.<sup>21</sup>

The point here is not to extol the genius of Federalism, representative government or checks and balances. It is instead to point out that democracy, even at the theoretical level, demands a commitment to institutions that will inevitably and perhaps significantly impose upon the freedoms of citizens. It is not, and cannot be, only a theory of majority rule.

The question of *which* institutions are uniquely democratic is not one that will be answered here. Democracy, like capitalism, is a word that can refer to both a philosophical orientation and a set of real-world institutions, and it is, again, the former that serve as the dissertation's subject. In this sense, elections, bicameral legislatures and the like can embody a democratic sensibility, but advocating them does not by itself define the intellectual construction of democracy. For example, the parliamentary approach that holds in so many other nations is not generally held to render those countries any more or less democratic than the United States.

With regard to American democracy, its "Madisonian" character is beyond question. Yet this is not to say that its intellectual construction follows literally from the political thought of the author of *Federalist 10*, and entering the fray that is competing scholarly interpretations of Madisonianism could not be further from my purposes. What *does* matter here is that Madison's influence has been such that democracy in the United States is impossible to describe outside of the logical framework he constructed, even if Madison himself might not be able to recognize the new forms his ideas have taken. Robert Dahl explains this transformation.

At the formation of the Constitution, the Madisonian style of argument provided a satisfying, persuasive, and protective ideology for the



minorities of wealth, status, and power who distrusted and feared their bitter enemies—the artisans and farmers of inferior wealth, status, and power, who they thought constituted the “popular majority.” Today, however, it seems probable that for historically explicable reasons a preponderant number of politically active Americans believe themselves to be members, at least part of the time, of one or more minorities—minorities, moreover, whose goals might be threatened if the prescribed constitutional authority of majorities were legally unlimited. Hence...the Madisonian ideology is likely to remain the most prevalent and deeply rooted of all the styles of thought that might properly be labeled “American.”<sup>22</sup>

Thus Madisonian—or, more appropriately, American—democracy turns on the assumption that the political sphere is one in which essentially every person is a member of some faction(s). As a result of this tendency, government must be wisely crafted to channel the selfish desires of some against the equally narcissistic motivations of others. Competing political programs arise, not only because a factional minority pits its own interests against those of the nation, but also, and perhaps more commonly, in situations characterized by two sets of exclusive interests in competition, or significant disagreements about what policies are in fact in the best interests of the country. Against this backdrop, then, democracy is the political philosophy that emerges from two competing principles: the first is that governmental power is a bestowal of the citizenry, but equally important is that among its primary functions is choosing among the policies favored by rival factions.

In the broadest sense, then, democracy represents not the people ruling themselves, but an intermittently stable condition of checks and balances *between* the people and the government. Should government officials continually elevate the desires of one faction above those of the others, they will most likely find themselves voted out of office; the consistent alienation of one minority faction (or the less frequent disappointment of a large majority), however, need not entail such consequences. One

might object that such an account of political power in a democracy is entirely circular: the competing interests of the factionally inclined body politic align in such a way as to endorse a given governmental administration, which then gains the ability to choose between the various factions, in turn amplifying or reducing their power to, among other things, choose government officials. I would argue, however, that this phenomenon rests not in the account of democracy, but in democracy itself, which does not really “ground” its power anywhere. Thus Joseph Schumpeter’s famous definition of democracy as “that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote,”<sup>23</sup> locates political power in the people, but fails to note the extent to which the *demos* itself gains power from the actions of government—not the least significant of which is holding the election in the first place.

When understood this way, democracy cannot be said to meaningfully or necessarily embody moral or political principles. Values such as freedom, equality, solidarity or even majority-rule can override either the government’s prerogative to adjudicate between factions or the people’s ability to select government’s personnel only to the extent that democracy is not in play. At its most fundamental, democracy allows for a malleable concept of the public good, which will be defined, appropriately, by the public. In this regard, democracy differs from capitalism, whose precepts are essentially eternal and immutable in their derivation, import and application. Whether two such systems can complement each other is the subject of the next section.

## **DEMOCRACY VERSUS CAPITALISM**

Given the understandings of American democracy and capitalism articulated here, as well as their status as intellectual touchstones for the nation’s cultural, intellectual and political life, the important question remaining is the effect of each system on the other

one. Do democracy and capitalism enhance—or inhibit—each other? Political scientists commonly observe that capitalism is a necessary condition of democracy; though capitalism does not guarantee democracy, no democratic regime has ever emerged from a non-market society. Few agree, however, whether this historical trend portends any particular theoretical conclusion. Moreover, in the United States, both democracy and capitalism are firmly established: the question of what needs to be done in order to bring democracy to the nation hardly seems relevant in this context. What is important here, and far less frequently discussed, are the theoretical implications of the implementation of both systems at once. It is my contention that democracy and capitalism exhibit a theoretical tension that approaches incompatibility, for two primary reasons. First, they are based on mutually exclusive conceptions of social interactions. Second, and of far greater significance, the extent to which goods are valued and distributed by market forces is the extent to which this power is denied to the forces of democracy, and vice versa.

Conservative pundit Irving Kristol once claimed that “capitalism is the least romantic conception of a public order that the human mind has ever conceived.”<sup>24</sup> While the idea that individual competition and the pursuit of self-interest will yield great social benefits might not be romantic, it can certainly be called idealistic, if not naïve. In self-interest, Adam Smith saw a motivation for individuals to behave in a fashion that benefits the larger community. The capitalism of *The Wealth of Nations* argues that rational egoism in the face of the pricing mechanism (which is in turn influenced by the factors of supply and demand) provides a sufficient incentive for individual actors to behave in a way that that will benefit society. Though “[t]he acquisition of valuable and extensive property...necessarily requires the establishment of civil government,”<sup>25</sup> its functions should not extend beyond those necessary to protect property and prevent non-consensual

exchanges characterized by fraud, theft, etc. The generally rational and self-interested character of human beings will ensure social harmony.

The political arena, on the other hand, cannot plausibly be described as one in which differing interests complement each other. It is far more often a zero-sum game in which gains for one party come at the expense of another one. Madison, as we have seen, deemed self-interest a threat to the political unity of society itself. It is the cause of faction, whose destructive energies require the intricate Madisonian structures of American government. Self-interest for Smith should be a locus for autonomy from political authority, while Madison views it as a site of needed government activism. The first major tension, then, between democracy and capitalism inheres in their respective views of social life, and it would be foolish to expect such a fundamental disagreement not to lead to significant disparities in policy prescriptions.

Market apologists, however, seldom refer to the common good. Instead, their preferred explanatory concept is that of “efficiency,” and it is the competing conceptions of this term that mark the second, and more significant, contradiction between democracy and capitalism. Capitalists generally avow that the market trumps any possible alternative system of production and distribution in terms of efficiency. Yet democracy, by its very project of satisfying competing interests, will not always ratify the market distribution as the most efficient one possible.

As a concept, efficiency relates means to ends: a given use of resources (the dedication of a certain amount of labor, land, raw materials, etc. to produce one specific good rather than another) is more efficient than another if the same amount of input garners more valuable output. The efficiency of a society-wide distribution of goods can be described in similar terms: a large-scale distribution is efficient if and only if the goods that wind up in the possession of each person are more highly valued than those

that might have been held under any possible alternative.\* As such, the term is inherently relative: whether or not a given use of inputs or distribution of outputs is more efficient than another depends entirely upon the values attached to the goods or outputs in question. As political scientist Charles Lindblom has pointed out, from the standpoint of physics, the inputs to any economic process are exactly equal to their outputs. Thus what makes one process more efficient than another is that the output is of a comparatively higher value than the inputs, or than other possible outputs. “It is not necessarily inefficient to use a ton of some input to produce a pound of output...No set of choices can be called correct, right or efficient except by reference to how they are valued.”<sup>26</sup>

Thus without some notion of how to assign value, the concept of efficiency is meaningless. The extent to which capitalism might or might not be inherently efficient, then, is relative to the method of valuing inputs and outputs. Assuming that value is an entirely human process, and not one by which specific qualities objectively inhere in certain objects, then two sorts of questions emerge. The first set concerns value itself: what things do people value, and how much do they value them? And how can producers, suppliers, employers, consumers and workers, who need this continually changing information in order to make decisions that in turn will alter the landscape of possibilities for other value-seekers, obtain it consistently? The second regards interpersonal comparisons: how do we compare valuations between one person and the next? Given that people will value the same objects differently, whose valuation should prevail? Furthermore, the significance of both kinds of questions emerge against the backdrop of the fundamental fact of the scarcity of resources. The devotion of labor or

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\* Thus the most efficient market distribution would appear to also be the one favored by the dictates of the Utilitarianism ethical system of Jeremy Bentham and John Stuart Mill. I am not aware of any specific link between capitalism and Utilitarianism, but the overlap certainly appears worthy of comment and further study.

raw materials to the creation of some valuable good forecloses the possibility of using those resources to produce some other one. Since any imaginable conditions preclude the possibility of producing every valued good, one inevitable task of social organization will always be that of prioritizing some wants and needs over others. An efficient system of political economy, then, is one that can, given a specific valuation of goods, deliver more value from the same set of resources.

Capitalist theory finds none of these seemingly problematic questions to be terribly troubling. Furthermore, every one of them can be answered by reference to the same data: the prices of goods. The laws of supply and demand give every person a voice in every object's valuation through his/her decision as to whether or not to purchase a good at a given price. If few citizens value a good enough to buy it, then sellers, who are motivated only by self-interest in maximizing their own return on investment, will drop the price in order to stimulate purchasing. Should the price of a good drop too low to realize a profit on it, production will cease as producers, again following their self-interest, one-by-one begin devoting their resources to production of other goods in the hopes that they can manufacture something that the people desire more than the first product.\* The second question, of interpersonal valuation, can also be answered with regard to prices. While it might be impossible to compare John's desire for a yellow submarine with Paul's demand for a silver hammer, the amounts of money with which each of them is willing to part order to obtain these goods is entirely commensurable. A market system is therefore able to both measure and compare the extent to which individuals desire various goods, and its mechanisms provide motivation for producers to

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\* The process is, of course, infinitely more sophisticated than this little sketch lets on. In particular, the producer's costs play a prominent role in whether or not he/she will be able to continue making the good available. The possibilities for economies of scale also allow goods with wide but shallow demand to continue in production. But the many other variables that need to be taken into consideration are all determined by combinations of the same mechanism of supply and demand.

provide those goods that large numbers of people want, or, barring that, that a smaller number desire very badly.

Under capitalist theory, then, the market does not merely promote the production of goods that are likely to be valuable; it provides nothing less than the collection of goods with the maximum possible value. Consider the possibility of a market that was outputting something less than this ideal basket of goods; under such circumstances, there must exist some good that some consumers would find more valuable than one that is currently being produced. By definition, those who wish to see resources used to produce this new good are willing to spend more than those who prefer to continue to use those resources in the same way. Wishing to realize the greater potential profit from the newly discovered demand, self-interested producers would begin producing the new good. After the new production schedule is put into effect, the aggregate value of goods being consumed is greater than it was before. At this point the total output is either at its maximum, *or* some good exists that is more valuable than at least one good currently being produced. This cycle will continue until such a good no longer exists, and at that point the goods being produced represent the greatest possible value that can be achieved from the resources currently available to that society. According to this understanding, markets do more than deliver efficiency—they define it.

This line of reasoning to support the efficiency of capitalism is invoked so frequently that it has attained the status of common sense. But the argument is nonetheless flawed or, more accurately, limited in its import. To understand why this is so, we must return to the definition of efficiency. An economic system is efficient to the extent that it can deliver the most value from a specific set of inputs. Under capitalism, a good's value, as previously discussed, is embodied in its price. A given set of resources is being put to the most valuable purpose if the bids that such a use can command are

higher than those associated with any other proposal. To determine the use of resources in this manner, however, is merely to practice capitalism. If value is defined in such a way that it is codeterminant with price, then capitalism and the production of the most valuable goods are merely two different names for the same system. This is not to say that capitalism's claims of perfect efficiency have been vindicated, but quite the opposite; they are circular and therefore devoid of meaningful content, akin to that of Molière's doctor who ascribed the tendency of opium to induce sleep to its "dormitive power."

The equivocation of value with price is a logical sleight of hand that illegitimately justifies capitalism's claim to perfect efficiency. This is not to say, however, that markets are not quite efficient. They very well may be; the extent of their efficiency is neither relevant to this dissertation, nor within its scope. But what is important here is that the traditional measure of this value, which identifies it with price, ignores many human wants that would seem under normal circumstances to fall under the rubric of "value." These include desires for goods one cannot afford,\* outcomes of transactions to which one is not a party (e.g., a person might prefer that a loud rock club not rent the property next door), public goods in which no one particular person has a proprietary interest (e.g., clean air), and so on. One way in which people seek to satisfy these sorts of desires is through the action of government. But when citizens use the power of government to impose a non-market conception of value on particular goods, they consequently redefine the standards by which one can judge economic efficiency. Put another way, they impede the ability of the economy to function according to ideal market theory, which

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\* One particularly vexing aspect of the circularity underlying the claim of market efficiency is that it renders one unable to acknowledge any significant difference between a person not desiring a particular good, and that same person desiring it immensely but not possessing enough money to pay for it. "A very poor man," wrote Adam Smith in *The Wealth of Nations*, "may be said in some sense to have a demand for a coach and six; he might like to have it; but his demand is not an effectual demand, as the commodity can never be brought to market in order to satisfy it."



would require it to be guided solely by prices. The fact of competing political and economic definitions of value raises the question of whether the widespread contention that the United States exhibits a political economy characterized by both democracy and capitalism is in fact a tenable one.

Thus democracy and capitalism exhibit a great theoretical tension, one that their real-world application in the United States has only served to exacerbate. The extent to which citizens use the power of government to alter the value of certain goods is the extent to which they are not allowing the market to do so. While it might be obvious that, say, a minimum wage alters the market value of labor or that farm subsidies change the price of produce, it is less clear, but equally true, that nearly everything that the government does will affect the price, and therefore value as defined by market theory, of goods. Consider one small example: the beef, dairy and sugar industries heavily lobbied the United States Department of Agriculture prior to the recent release of its revised “food pyramid.” Were the guidelines to recommend that Americans eat less of these products, the lobbyists knew, the financial consequences for their industries would be severe. Government is quite simply unable to be agnostic with regard to the economy, and few would desire it to be so even if it could: the people generally prefer a strong currency to a weak one, low rather than high unemployment, economic growth rather than stagnation, and the like. Moreover, democracies have no particular exemption from this fact. Any government that would limit its actions to those whose economic effects were neutral upon all parties would do literally nothing of any significance. Thus the very existence of government will influence (or “distort” in the eyes of market apologists) the valuations at which market forces would have otherwise arrived; the more that government does, then, no matter how well-meaning, the less efficient—presuming the market definition of efficiency—will be the distribution of goods.

The fact that the political and the economic are inseparable has been readily apparent to libertarians for decades. In 1944, Frederich Hayek advanced this argument in the tremendously influential *The Road to Serfdom*. In contesting the notion that planned economies limit economic freedom in exchange for the expansion of other, more “important” freedoms, Hayek challenged the idea that some liberties are “merely” economic.

It is largely a consequence of the erroneous belief that there are purely economic ends separate from the other ends of life. Yet, apart from the pathological case of the miser, there is no such thing. The ultimate ends of the activities of reasonable beings are never economic. Strictly speaking, there is no “economic motive” but only economic factors conditioning our striving for other ends. What in ordinary language is misleadingly called the “economic motive” means merely the desire for general opportunity, the desire for power to achieve unspecified ends.<sup>27</sup>

Hayek’s argument is simple, clear and straightforward: since there are no strictly economic desires or projects, any attempt to regulate economic transactions (i.e., limit economic freedom) will range beyond economics into other, more traditionally political, realms of life. In one memorable example, Hayek points out that it is difficult to claim that a society exhibits freedom of speech if the government is the only seller of paper and newsprint—no matter what the price is, it will be too high for some potential publisher.

Nearly twenty years later, Milton Friedman opened his now-classic *Capitalism and Freedom* by decrying as a “delusion” the “widely believed” idea “that politics and economics are separate and largely unconnected; that individual freedom is a political problem and material welfare is an economic problem; and that any kind of political arrangements can be combined with economic arrangements.” Writing at the height of the Cold War, Friedman’s main concern was to argue that “a society which is socialist cannot also be democratic, in the sense of guaranteeing individual freedom.” Since “there is an intimate connection between economics and politics [and] only certain

combinations of political and economic arrangements are possible,” the significant restriction of economic life cannot help but take its toll on political liberties.<sup>28</sup>

In at least one respect, the libertarians are correct: economics are impossible to disentangle from politics. But thinkers like Friedman and Hayek generally only follow this point in one direction: while arguing that socialism cannot coexist with democracy, they ignore the fact that the same arguments raise questions about whether capitalism can; while decrying the extent to which politics deforms the wisdom of the market, they generally shed few tears for capitalism’s distortion of the will of the people as expressed through democracy. If freedom of speech is threatened when the government will not sell paper to publishers, then it must be equally under attack when the paper company refuses to do so. Moreover, the restriction of political liberty is a legitimate, if philosophically problematic, function of democratic government. But if motives are never, in Hayek’s phrase, “purely economic,” but instead reflect the desire for “general opportunity” or “power,” then certainly some of these objectives can be political in nature. Thus the limitation of a person’s financial prospects can expand or limit one’s political horizons. Capitalism, then, relocates a core public function to the doings of individual citizens working through entirely private market transactions. On the whole, the relationship between democracy and capitalism is problematic, at best.

In short, politics and economics are inextricably linked, while the respective American systems—democracy and capitalism—are philosophically incompatible. The next section will consider these seemingly contradictory observations, and present a new account of democratic capitalism that can reconcile these competing observations.

## **DEMOCRATIC CAPITALISM**

If democracy and capitalism are incompatible systems of thought, as I believe they are, then what accounts for the impressive record of American political economy,

which for well over two hundred years has demonstrated a remarkable stability while orienting itself around these two intellectual poles?\*

In response to this question, the thesis I present here is that such success is possible only because American political economy is not well-characterized as a hybrid of democracy and capitalism. The attempt to follow the dictates of these two incompatible philosophies has instead imposed upon the United States a distinct system of political economy, one whose theoretical outlines have not been sufficiently explored. American democratic capitalism is best understood as an arrangement by which the people cede to government the responsibility for ensuring a healthy economy, but also continually redefine the parameters of economic efficiency through the democratic political process. This interpretation suggests that the American people have the right, in their roles as citizens, to declare a different and superceding notion of value than the one they affirm in their other roles as consumers, workers and investors.

Under this interpretation, capitalism remains an instrumental component of political economy in the United States, but not because of the demands of justice, history or the national character. Instead, the prominent place of free markets in the nation's political economy has depended upon their continual affirmation by the body politic as a tool for achieving specific goals and solving specific problems. Despite the widespread identification of the United States with commercialism and market economics, the American people have exhibited an occasional but not infrequent tendency to affirm, under certain circumstances, economic policies that veer away from the ideology of capitalism. This propensity, in my view, exemplifies not a fragile democratic capitalism,

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\* To make this claim is not to argue that political economy in the United States is without significant flaws. Most notable in this regard are three problems that perennially plague the system: poverty, economic inequality and the decreased ability of the less well-off to participate in the nation's political life. Though some might plausibly argue that these flaws are damning of American democratic capitalism, by the standards of stability and popular support, the system deserves fairly high marks.

incapable in the face of adversity of affirming its most deeply-held principles. Instead, in subjecting economic goals to the will of the people, it suggests a generally healthy and robust implementation of democratic principles.

This thesis as to the nature of democratic capitalism advances two interrelated hypotheses: one normative and one descriptive. The first, prescriptive, claim issues from the choice to refer to the system as one of “democratic capitalism.” The name, though of little intrinsic importance, implicitly stakes out a middle position between those on the “right” who would argue that the intellectual infrastructure animating American political economy is lacking in its appreciation of capitalism, and those to the “left” who find the same set of theoretical presumptions to be insufficiently democratic.

With regard to the former, conservatives and libertarians are generally in favor of an unfettered market economy, and therefore wish to see as little government interference as possible in the nation’s economic affairs. They ground this capitalist platform on a belief in a conception of liberty that is independent of culture or history in its meaning, content or application. Milton Friedman, again, is an able representative of this view.

Economic arrangements play a dual role in the promotion of a free society. On the one hand, freedom in economic arrangements is itself a component of freedom broadly understood, so economic freedom is an end in itself. In the second place, economic freedom is also an indispensable means toward the achievement of political freedom.<sup>29</sup>

Under this interpretation, a system is free only to the extent that it allows the sort of market activity that Friedman favors. Obviously, then, a democratic capitalism along the lines proposed here, in which the political process significantly influences the direction of economic policies, is not one that could meet with conservative approval. More to the point, it could not accurately be labeled “capitalist.”

The best response to this criticism is to acknowledge its insight. This irrefutable logic, however, comes at the price of ignoring the specific problem that democratic

capitalism presents, one that springs directly from the fact, so well-supported by libertarians like Hayek and Friedman, that politics and economics are not hermetically sealed from each other. To insist upon capitalism, regardless of the reason, is to give one's imprimatur to a government that does not meet the standards of democracy. From a political standpoint, this ideally capitalist society would have the power to forbid various forms of coercion and deception (putting aside the thorny question of whether it could tax to enforce these laws), but would have no authority at all, for example, to require doctors to have licenses, forbid racial and gender discrimination in employment, or provide public parks. Yet the restricted ability of the people to execute these and a host of other fairly uncontroversial programs and policies makes it clear that the people do *not* rule: this particular government could not fairly be labeled democratic at all. Libertarians argue that such a state is ideal, and they may be right.\* But the desirability of the minimal state is not the issue here—the tenability of democratic capitalism is, and the fact is that no state can simultaneously institute a fully-formed capitalism and an equally robust democracy.

The objection from the “left” in many ways parallels the libertarian argument. Theorists of “pluralism” such as Charles Lindblom and Robert Dahl argue that government has no monopoly on authority. Thus for a society to be democratic, many non-governmental institutions must also be administered in a democratic fashion. Perhaps the institution most relevant to our purposes, and one that Dahl singles out as particularly significant, is the workplace.

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\* The most prominent example of this approach is Nozick's argument for the “night-watchman state” in Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974). In a sense, my argument here is the mirror-image of the famous “Wilt Chamberlain example” contained in that classic work. While Nozick argues that the extent to which government imposes a distributional pattern is the extent to which it restricts freedom, I am arguing that the extent to which it protects economic freedom is the extent to which it makes democracy impossible.

Why should citizens in an advanced democratic country be concerned with the internal government of firms? We might better ask: How could they possibly not be? Work is central to the lives of most people: For most people, it occupies more time than any other activity. Work affects—often decisively—their income, consumption, savings, status, friendships, leisure, health, security, family life, old age, self-esteem, sense of fulfillment and well-being, personal freedom, self-determination, self-development, and innumerable other crucial interests and values. Of all the relations of authority, control, and power in which people are routinely involved, none are as salient, persistent, and important in the daily lives of most persons as those they are subject to at work. What governments have such immense consequences for daily life as the government of the workplace? Where could despotism work its effects more insidiously?<sup>30</sup>

By this logic, then, the political economy of the United States could certainly not be considered one of democratic capitalism. Its government, at its best, is democratic, but certainly few, if any, of its other major institutions merit this status.

This argument runs aground, however, on the contingencies of the historical situation in the American context. The citizens of the United States have made little effort to use their democratic government to impose a more egalitarian structure on the workplace. Americans have generally supported the capitalist economic system, which has included as part of its makeup the authoritarian nature of workplace relationships.\* Though the pluralist objection, like the libertarian one, raises an interesting philosophical issue—that of whether a people can use the democratic process to either vacate their own decision-making power or impose non-democratic structures on other parts of society—it is also ultimately irrelevant to the central issue. Whether or not the workplace, or other institutions, *should* be democratic is a separate question from whether or not the American people desire that they be so.

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\* Though one might remark that a true believer in the efficiency of market transactions would organize a firm on the basis of such a basis, rather than by the authority relation.

In addition to the normative claim discussed above, however, my articulation of the nature of democratic capitalism in the United States contains a purely factual element. This assertion is simply that the nature of American political economy is as I have described it: a process by which the government, held accountable by the people for the functioning of the economy, has consistently set a broadly capitalist agenda while nevertheless deviating from that program when the body politic exerts pressures for specific economic results. Subsequent chapters will support this characterization with accounts of significant developments in the changing historical and philosophical terrain of democratic capitalism in the United States. First, however, I will clear away some intellectual brush by devoting the next chapter to taking on the biggest objection to this conception of democratic capitalism: that it makes no room for the primacy of liberty.



## **Chapter Two: The Limits of Liberalism**

The first chapter established as the theoretical foundation of this dissertation the premise that democracy and capitalism are philosophically incompatible. A consequence of this theoretical tension is that the principles that underlie American political economy cannot be described as simply a union of a democratic political ideology with a capitalist economic one. Instead, democratic capitalism in the United States has been an arrangement by which the government bears the responsibility for the efficient function of the national economy, while being subject to the determinations of economic value, and therefore the criteria for economic efficiency, that the people express through the democratic process.

In my view, acknowledging this contradiction requires some rethinking of the parameters of U.S. political economy. Yet even those who recognize the intersection of democracy and capitalism as a site of contention do not necessarily see the need for massive theoretical revisions to the system. In his influential bibliographic essay “Capitalism and Democracy,” for example, political scientist Gabriel Almond referred to the relationship between democracy and capitalism—“this tension between the two major problem[-]solving sectors of modern society”—as one of “ambivalence and dialectic.” Reviewing “a rich literature,” he claimed to find “[a]ll the logically possible points of view.” Almond then divided this discursive universe into four seemingly exhaustive camps. “There are those who say that capitalism supports democracy,” he wrote, “and those who say that capitalism subverts democracy. And there are those who say that democracy subverts capitalism, and those who say that it supports it.”<sup>31</sup>

This alleged completeness of Almond’s overview inadvertently reveals a blind spot in the literature itself. To ask the question whether democracy and capitalism

“subvert” or “support” each other is to implicitly and illegitimately assume that their meanings are fixed, and their only movement is up or down along a fixed axis marked “success” on one end, and “decline” on another. This sort of essentialism ignores the fact that democracy and capitalism can take different forms: the ancient Athenians would not recognize the “democracy” of the United States, with its prominent role for representation, nor would Adam Smith approve of the active role of the corporation that characterizes capitalism today. Though Almond admits that economics and politics “necessarily interact with each other, and transform each other in the process,”<sup>32</sup> his taxonomy says little of such transformations and more of an advance or decline in the fortunes of the respective ideologies.

Such alterations are not always for the worst; a modification to a theory in light of new evidence does not necessarily “subvert” it or water it down. Though democratic capitalism in the United States cannot be a unity of an untainted democracy with an unadulterated capitalism, it is not for that reason weak or substandard. Nonetheless, Americans tend to feel threatened at the suggestion that their political or economic systems are anything less than pure. The reason for this resistance, in my view, lies in the virtually unchecked influence of the doctrine of classical Liberalism in the United States.\* Both democracy and capitalism owe their philosophical underpinnings to this intellectual tradition, and Americans therefore have difficulty seeing that the two systems are in fact at odds with one another.

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\* It is an unfortunate accident of history that in the United States the same word “Liberal” refers both to the philosophical tradition under discussion here, and to a specific political application and interpretation of this ideology, i.e., that normally associated with the contemporary Democratic party. The two words do not possess interchangeable meanings, and one should not assume that the word “Liberal” in reference to, say, John Locke, is the same as that used to describe, for example, Franklin Delano Roosevelt. In this work I will capitalize the word in its former, philosophic, use, and use the lower-case initial letter when using its political derivant.

Yet Liberalism itself is hardly free of contradiction. From its earliest origins, it has struggled to reconcile its own divergent ideals: freedom and equality. In this chapter, I will argue that the tension between democracy and capitalism is a specific manifestation of this broader conflict inherent in Liberalism itself, as theorists traditionally ground democracy on egalitarianism and capitalism on the primacy of liberty. Rather than proposing to square the circle once and for all by finally reconciling freedom and equality, I will instead argue that as long as democratic capitalism can underwrite practices and institutions that yield the results Americans desire, then there is no need for *any* philosophical theory to justify it. Thus the United States can continue to affirm democratic capitalism while rejecting the unnecessary baggage of classical Liberalism. This argument is a specific application of the insights of the contemporary American pragmatist philosopher Richard Rorty, who holds that the value of political institutions is largely independent of the elegance of their philosophical foundations. “[L]iberal democracy,” he argues, “can get along without philosophical presuppositions.”<sup>33</sup> After an overview of Liberalism and its influence on the democracy and capitalism of the United States, I will present Rortyan pragmatism as a more satisfying theoretical system. Further, I will argue that this approach can justify democracy but is not able to offer the same support to capitalism. The most viable conception of democratic capitalism, then, emerges as that presented in Chapter One—one in which the economy is less an arena in which to actualize the abstract notion of freedom than a tool for the manufacture and distribution of goods and services. Under this interpretation, the American people are under no moral obligation to employ the tools of the market, but can implement capitalism, or choose not to, to the extent that they find it to meet their needs.

## WHAT IS LIBERALISM?

Philosophically, Liberalism is traditionally understood as the belief that the primary function of government is to protect individual freedom. To the contemporary American reader, such a sentiment might seem so obvious as to constitute a platitude rather than a philosophy. But the many functions of government are not all compatible with an emphasis on liberty. Nations around the world and throughout history have been organized around other missions: the stockpiling of gold, the implementation of God's will on earth, the conquest of territory, provision for an elite, and so on.

But Liberalism is a European creation and was therefore defined against that continent's tradition of feudalism, whose organizing principle was one of hierarchy rather than liberty. The political order of feudalism closely reflected the intellectual and moral order of the Middle Ages, one which historian A.O. Lovejoy has christened the "great chain of being."

[T]he plan and structure of the world which, through the Middle Ages and down to the late eighteenth century, many philosophers, most men\* of science, and, indeed, most educated men, were to accept without question...[consisted] of an infinite number of links ranging in hierarchical order from the meagerest kind of existents...through 'every possible' grade up to the *ens perfectissimum*—or, in a somewhat more orthodox version, to the highest possible kind of creature, between which and the Absolute Being the disparity was assumed to be infinite—every one of them differing from that immediately above and that immediately below it by the 'least possible' degree of difference.<sup>34</sup>

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\* The use of male pronouns in universal contexts sends implicit messages about the role and capabilities of women with which I do not agree. But the frequency of such usage, particularly in older works, is unfortunately so great that noting its specific instances with an incessant use of "[sic]" would be unduly burdensome on both reader and writer. One should assume that I am taking all examples of this practice to be inclusive of all genders, regardless of the intent of the original writer.

This hierarchical structure separated not only humans from animals, but also individual humans from each other. In the family, men were above women, who in turn occupied a higher space than the children. Politically, the monarch was at the top of this structure, followed by the aristocracy; at the bottom was the landless peasant. Each person owed both fealty and goods to the next one up the chain; this arrangement was justified not only by political custom, but by the belief that these responsibilities were a logical extension of each person's naturally given role.

It is against this backdrop that philosopher John Locke wrote in 1690 what is perhaps the essential text of Liberalism, the *Second Treatise on Civil Government*. Following the earlier thinker Thomas Hobbes, Locke attempted to derive the powers and extent of government from a consideration of its origins. To establish the genesis of politics, both thinkers conducted what amounts to a thought experiment regarding what life would have been like in a hypothetical anarchic time before humans had created the institution of government. This pre-political environment, which philosophers have come to call the "state of nature," offers an opportunity to isolate the core functions of government by establishing both the specific problem it was created to solve, and the conditions under which people were willing to submit to its authority.

In Hobbes' most famous work, the 1651 *Leviathan*, the philosopher had described his view of the state of nature as an unbearable situation in which everyone's security is constantly at risk. Significantly, Hobbes broke with the Great Chain of Being model in positing human beings to be relatively equal in both their talents and their ambitions. Consequently, he held the state of nature to be, in his famous declarations, "a war of every man against every man," in which life was "solitary, poor, nasty, brutish and short."<sup>35</sup> Under these conditions, people would reach two conclusions: that the tenuousness of their situation makes literally any other arrangement preferable to the one

that they have, and that the most effective way to ensure mutual security was to empower some strong central authority to keep each of them in check. This mutual agreement both originates and defines government itself. As the various denizens of the state of Nature voluntarily submit to “such a common power as may be able to defend them from the invasion of foreigners and the injuries of one another,” it is as though “every man should say to every man *I authorize and give up my right of governing myself to this man, or to his assembly of men, on this condition, that thou give up thy right to him, and authorize all his actions in like manner.*”<sup>36</sup> Though Hobbes believed that the people had, by this action, eternally alienated their right to any stake in governing, his emphasis on the natural equality of human beings in the state of nature, as well as his belief that government, at least in its origins, was founded upon a social contract between individuals has established his reputation as one of the earliest Liberals.

Locke, however, put in place what would become the foundational principles of Liberalism by breaking with the assumptions of his forbearers. The Great Chain of Being concept had suggested that human beings inhabit a social universe ordered by nature herself, while Hobbes found that humans had rejected their original state of rough equality and unlimited freedom on the grounds of its distasteful consequences. Like Hobbes, Locke viewed humans as essentially free, but unlike him argued that their liberty would not be fundamentally altered with the establishment of government. The reason for this continuity is that even in the state of Nature freedom would be subject to certain restrictions. As there exists no government of any form, these limitations are not of the nature of a law, or indeed any human-made prescriptive code. Instead, they are imposed by the limits of Reason itself, which Locke calls the “the law of Nature.” Thus the state of Nature is relatively peaceful and stable: those who live there are in “a state of perfect

freedom to order their actions, and dispose of their persons and possessions as they think fit, within the bounds of the law of Nature.”<sup>37</sup>

Locke believes that reason endows individuals with not only the power to know what the bounds of their behavior should be, but also the recognition that these restrictions are binding even without the compulsion of some external force.

The state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions.<sup>38</sup>

Thus the natural state of human beings is one in which certain rights must be respected. These rights are not created through the process of government, but inhere in every human being as a consequence only of that humanity. Human beings, according to Locke, are by their very nature free, equal and endowed with a right to property. These characteristics are essential to each person; they are neither created by any sort of social arrangement, nor susceptible to reduction or elimination by even the most widespread consent.

The belief that individuals are naturally possessed of a limited set of what Thomas Jefferson would later call “inalienable rights” has come to define Liberalism, rendering the *Second Treatise* essentially the tradition’s founding work. The most fundamental of these rights is that of property. The right to property is primary; it is neither derived from another more basic right, nor created by humans through the social contract. In fact, no less an authority that God himself established the collective human ownership of the world when he commanded Adam and Eve to “replenish the earth and subdue it.” For Locke, then, the only remaining issue was the “very great difficulty” of “how any one should ever come to have a property in anything.”<sup>39</sup> His answer is that no social or political arrangements can change the fact that a person is in control of his/her own body.

“Though the earth and all inferior creatures be common to all men, yet every man has a ‘property’ in his own ‘person.’ This nobody has any right to but himself.”<sup>40</sup>

Thus for Locke the fact of a person’s ownership of his/her own body establishes that an individualistic concept of property will operate in the state of Nature. But this plausible account of one very personal piece of property hardly justifies, say, the tremendous amount of property held by Bill Gates. How does the possession of one’s body relate to that of any other object? Locke’s answer is that if a person owns his/her body then it would stand to reason that he/she also possess its labor and, by extension, the fruits of that exertion. When applied to the example of land, which political theory generally takes as the most significant sort of holding, Locke’s inferential chain seems merely commonsensical: surely none other than the one who plants and harvests crops should retain title to them at harvest time. Generalizing outward, then, labor justifies all property beyond the very specific instance of one’s own body, and since work is endemic to the human condition, so is property. “God, by commanding to subdue, gave authority so far to appropriate. And the condition of human life, which requires labour and materials to work on, necessarily introduce[s] private possessions.”<sup>41</sup>

Thus Liberalism is grounded upon the institution of property, which Locke saw as both natural and individual. It is not what humanities scholars are prone to call a “social construction”<sup>\*</sup>—that is, an idea created by a given culture at a roughly specific historical moment—nor is it compatible with the notion of collective holdings. These two positions are inextricably linked, as pointed out by political scientist C.B. MacPherson in 1962.

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\* The term was originally coined by sociologists Peter Berger and Thomas Luckmann in *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (Garden City, NY: Anchor Books, 1967). It has since then grown very popular among scholars in the humanities as a foil for the notion that any particular set of cultural institutions, practices or beliefs are beyond the power of human beings to affect.



For to insist that a man's labour is his own, is not only to say that it is his to alienate in a wage contract, it is also to say that his labour, and its productivity, is something for which he owes no debt to civil society. If it is labour, a man's absolute property, which justifies appropriation and creates value, the individual right of appropriation overrides any moral claims of the society.<sup>42</sup>

These two intertwined positions—the natural origin of property as well as its individualistic nature—are central to the meaning of Liberalism.

Given that people are naturally free, and that the law of Nature already forbids the most egregious violations of property rights, it would not seem obvious that Locke would advocate any government at all. But the fact that moral codes exist does not by itself guarantee that everyone would follow them; some become “degenerate, and...quit the principles of human nature.” In the face of activity that would undermine it, the law of Nature, in Locke's view, grants to human beings the specific right of punishing wrongdoers. “[E]very one has a right to punish the transgressors of that law to such a degree as may hinder its violation. For the law of Nature would...be in vain if there were nobody that in the state of Nature had a power to execute that law.”<sup>43</sup>

But the natural tendencies of human beings render the State of Nature somewhat flawed. People tend to view harms done to themselves as far more egregious than those done to others, and therefore the right to exact reparation is quite likely to be executed against the wrong person, or through a punishment that is too harsh. In order to obtain greater fairness and objectivity, residents of the state of nature would initiate the institution of government in order to execute these judgments on their behalf. This, then, is the genesis of political society—the voluntary alienation of each citizen's natural right to punish those who have wronged that individual.

But because no political society can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto punish the

offences of all those of that society, there, and there only, is political society where every one of the members hath quitted this natural power.<sup>44</sup>

Thus for Locke the purpose of government is to protect the rights that humans in their natural state already have. The government does not define or grant rights, nor does it have the power to deny them without being in violation of its mandate.

The influence of Locke on Liberalism is virtually impossible to overstate. Three prominent ideas of the *Second Treatise* are essentially definitive of Liberalism: that the individual is both logically and morally prior to society; that he/she is defined by the possession of specific rights, of which property is the most important; and that government is defined by and limited to its function of enforcing these rights. When defined this way, Liberalism appears to be a doctrine concerned primarily with the freedom of the individual, to the particular exclusion of another significant political value, that of equality. Echoing this commonly held sentiment, Milton Friedman found no room at the Liberal inn for the principle of equality. “[O]ne must choose. One cannot be both an egalitarian...and a liberal.”<sup>45</sup>

This devotion to freedom, though, is only the most frequently cited criterion of Liberalism, not the only one. The rejection of feudal hierarchies was a central impetus in the founding of Liberalism, and libertarianism alone is not sufficient to that task. A more direct refutation of the Great Chain of Being idea is to be found in the egalitarian notion that no human being is superior to any other. This notion, it would appear, is as central to Liberalism as is the respect for individual liberty. Political philosopher Amy Gutmann argues that Liberalism can be distinguished from older political traditions specifically by its emphasis on egalitarianism. “It is only modern *liberal* theorists who overwhelmingly deny previous claims of a natural hierarchy, while contending that a just state must be conceived on the basis of an assumption of human equality.”<sup>46</sup>

Equality is a prominent theme in classic liberal works. Hobbes believed that the state of Nature found people roughly equal in their talents and attributes, and would possess ambition to match. It is this rough equality that prevents any stability from arising there; since no one person could use his/her gifts to dominate any two or three others, neither acquiescence nor safety could be expected.

Nature hath made men so equal in the faculties of body and mind as that, though there be found in one man sometimes manifestly stronger in body or of quicker mind than another, yet when all is reckoned together the difference between man and man is not so considerable as that one man can thereupon claim to himself any benefit to which another may not pretend as well as he...From this equality of ability ariseth equality of hope in the attaining of our ends. And therefore, if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies.<sup>47</sup>

Locke found Hobbes's vision of equality so troubling that he did not believe the latter's depiction described a state that could truly be called free. For Locke, equality and liberty are inextricably linked, and Hobbes's claim that an increase in the former yields a decrease in the latter was nonsensical. Though the Lockean state of Nature is characterized by its freedom, it is furthermore a

state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another, there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one amongst another...But though this be a state of liberty, yet it is not a state of licence [sic]; though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it.<sup>48</sup>

For Locke, true freedom exists only when a person understands that one's desire to do anything at all is at odds with the equally strong wish for others *not* to have the same privilege. For it is logically impossible for *everyone* to do anything they want;

eventually the exercise of one individual's freedom will restrict the expression of someone else's. Thus Lockean "liberty" consists of living within the bounds of the law of Nature, while the less restrictive "license" will lead exactly to the state of constant war that Hobbes described. In Locke's view, Hobbes misdiagnosed the character of the state of Nature precisely because he recognized only the fact of human equality with regard to talents and capabilities; the earlier philosopher failed to realize that freedom in the state of Nature would be impossible unless this equality were acknowledged by its members.

It is the more attractive, yet arguably less consistent, Lockean vision of freedom and equality that has come to define the Liberal tradition. Though Hobbes and Locke did disagree about the attributes of human equality, both saw it as an essential component of the human equation, as revealed in the state of Nature. Some sixty-five years after the publication of the *Second Treatise*, another influential Liberal, Jean-Jacques Rousseau, would agree, writing that "inequality is hardly observable in the state of nature, and its influence there is almost nonexistent."<sup>49</sup> In short, equality can boast of a liberal pedigree as old and distinguished as that of freedom.

But as Liberalism is the expression of both freedom and equality, it is the site of an eternal and insoluble conflict, because these two values are mutually exclusive. "Unfortunately, liberty and equality often conflict," writes influential legal and political philosopher Ronald Dworkin, "sometimes the only effective means to promote equality require some limitation of liberty, and sometimes the consequences of promoting liberty are detrimental to equality."<sup>50</sup> This conflict has been noted often enough to be a bit of a cliché among political observers, but few have taken the problem terribly seriously on a philosophical level. In a nation as devoutly Liberal as the United States, however, a tension such as this one deserves more than passing attention.

## LIBERALISM IN THE UNITED STATES

In 1955, historian Louis Hartz published the now-classic *The Liberal Tradition in America*. The book has reached a status achieved by few such works: its central thesis has been so well-received that it is now thought of as conventional wisdom, to the perhaps ironic detriment of Hartz's reputation as its originator. Hartz argued that because the United States, unlike Europe, lacks for a history of feudalism, Liberalism is the only political tradition with any intellectual or emotional currency here.

[America's] liberalism is what Santayana called, referring to American democracy, a "natural" phenomenon. But the matter is curiously broader than this, for a society which begins with Locke, and thus transforms him, stays with Locke, by virtue of an absolute and irrational attachment it develops for him, and becomes as indifferent to the challenges of socialism in the later era as it was unfamiliar with the heritage of feudalism in the earlier one. It has within it, as it were, a kind of self-completing mechanism, which insures the universality of the liberal idea.<sup>51</sup>

Though Hartz's book is subject to a certain tendency toward overblown generalization, his underlying claim as to the emphasis on Liberalism in the United States is no longer subject to serious dispute. The United States is, in short, a Liberal nation.\*

It is thus no exaggeration to claim that, in the United States, everyone is a Liberal. Despite the infatuation of leftist academics with early twentieth-century socialism, that tradition has never threatened mainstream American Liberalism. To cite one example, the high-water mark of Socialist presidential fortunes came in 1912 when Eugene V. Debs won only six percent of the popular vote. And American conservatism reveals itself to be a type of Liberalism, when compared to its Burkean cousin. While the

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\* Historians such as J.G.A. Pocock, Bernard Bailyn and Gordon Wood have quite influentially contested this idea with regard to the Revolutionary and Early National periods. Finding a republican tradition of civic virtue rather than a Liberal concern with individual rights, this group has essentially overturned the scholarly consensus with regard to this time frame. Though these works do cause some problem for Hartz's book in its specifics regarding those periods, they do not, in my view, significantly invalidate his broader point that in the United States political thought has largely been framed within the context of Liberalism. This point will be taken up more specifically in the following chapter.

European strain developed specifically to elevate the role of tradition in order to balance liberty against other concerns, its American offshoot is essentially a defense of freedom over competing values. If, as is often argued, Barry Goldwater's 1964 presidential campaign marked the seminal moment in defining contemporary conservatism, the candidate's famous remark that "extremism in the defense of liberty is no vice" should clearly mark the Liberal twang that conservatism had acquired in its migration across the pond.

Yet Hartz's observation that Liberalism has and will take different forms as Americans adapt their only political philosophy to the challenges of the day is equally on point. Freedom is very much the watchword in today's political climate, while equality takes a distant second; and the illiberal interest in security since September 11 might yet derail Hartz's hypothesis entirely. But it was not always so. The most treasured words of the Declaration of Independence cede no prominence to egalitarianism for the sake of freedom. "We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."<sup>52</sup>

Hartz's own favorite piece of evidence is a quotation from Alexis de Tocqueville that he cites often, even using it as the epigram to *The Liberal Tradition in America*. "The great advantage of the Americans is, that they have arrived at a state of democracy without having to endure a democratic revolution; and that they are born equal, instead of becoming so."<sup>53</sup> Thus Hartz's defining quality of American liberalism is not its devotion to freedom, but its commitment to equality. Of course, the ideal of equality has played a significant role in many important American political movements; abolitionism, suffrage, Civil Rights and feminism are perhaps only the most prominent. In short, American

Liberalism inherits from its classical forbearer the same emphasis on both liberty and equality.

But by far the most significant application of Liberal equality in the United States is the country's democratic form of government. Rhetorically, democracy is often celebrated as the application of liberty, but this common trope is a mistaken one. The business of government, as libertarians are fond of pointing out, is to restrict freedom, not expand it. The animating principle of democracy is thus not freedom, but equality. Political scientist Robert Dahl has noted that democracy would "be little more than a philosophical fantasy were it not for the persistent and widespread influence of the belief that human beings are intrinsically equal in a fundamental way."<sup>54</sup>

But Liberalism, as noted above, is rooted in freedom as much as equality. And this aspect of Liberalism is showcased most prominently in the American devotion to that country's capitalist economic system. Capitalist ideology holds that a system of private property, voluntary exchange and market pricing not only yields the most efficient distribution of goods, but also provides the maximal amount of liberty for everyone involved. Capitalism, wrote Nobel Prize winning economist Milton Friedman, is "a system of economic freedom and a necessary condition for political freedom."<sup>55</sup>

The conflict between democracy and capitalism is only an example of a much broader tension within Liberalism itself. The differences between the two are irreconcilable, because the first institutionalizes equality, while the second embodies freedom. Since egalitarian and libertarian concerns are substantially exclusive of one another, the fact that democracy and capitalism both derive their authority from Liberalism does not render their incompatibility any less puzzling or likely. Far from representing the harmony and coherence of the Liberal tradition, the instability of the

traditional conception of democratic capitalism exemplifies one of its most persistent and damning flaws.

Viewing the conflict between democracy and capitalism as a specific version of a larger liberal tension thus clearly signals that the two can never be combined without clashing. Instead of attempting to achieve this impossible task, we must begin to think of American democratic capitalism in a new way: as a system by which the people empower their government to ensure an efficient market economy, while retaining unto themselves the power to define the parameters of efficiency itself. Given that the conception of value that the people employ through the political process will differ from that defined by the market, the most efficient economy is not necessarily one characterized by the optimization of freedom or, for that matter, the maximization of equality. Thus the theoretical foundation of democratic capitalism, as I have presented it here, is not, and cannot be, a Liberal one.

A glance at the historical functioning of democratic capitalism in the United States hardly justifies the claim that the system exemplifies Liberalism in action, but the persistent American desire to justify social and political arrangements by reference to Liberal values clouds the nation's attempts to achieve a clear understanding of its own political economy. The tension between liberty and equality cannot reasonably be expected to ease, and nowhere is this manifested more clearly than in the clash between democracy and capitalism. The solution, then, lies in two related philosophical moves: the reformulation of democratic capitalism along the lines I have been urging here, and the abandonment of classical Liberalism. The ahistorical and presocial political values that characterize the Liberal tradition are in fact hard to justify philosophically. Locke notwithstanding, tremendous difficulties present themselves when one attempts to imagine what sort of evidence could even theoretically support the claim of human



equality or of a transcendent political obligation to respect the freedom of others. Rather than attempting to ground our political ideas and practices on some non-human state of affairs, the appropriate theoretical approach to democratic capitalism would not require any specific assumptions with regard to the nature of human beings or the function of political associations. In short, it must be an anti-foundational theory.

The most satisfying such orientation is, in my view, that of American pragmatism, and its most eloquent and forceful proponent is philosopher Richard Rorty. The world, in Rorty's view, presents no foundational principles that would force those of different political persuasions to agree on any particular set of ideas or institutions. Rather than turning toward an unsatisfying nihilism, however, Rorty asks us to consider whether non-foundational principles of ethics and morality lack anything that we truly need. As such, a given group of people can affirm democracy or capitalism without contradiction, but only to the extent that they are willing to forego the argument that these systems are anything more than the ones that their history and culture has led them to prefer. The remainder of this chapter will explain these ideas in more detail, and draw out their relevance and implications for my own analysis of American democratic capitalism.

## **POLITICAL EPISTEMOLOGY**

Pragmatism itself is hardly a political theory. Its main import is in the philosophical discipline of epistemology, or the study of the parameters of knowledge. Since knowledge is in turn a condition of truth (i.e., all examples of knowledge must presumably be true), a great deal of epistemology centers around the question of truth itself: that of what conditions must hold, in general, before we can successfully claim that a statement is true. One way of describing pragmatism is as the belief that this question need not be answered, or really even asked. "Truth," writes Rorty, "is not the sort of thing one should expect to have a philosophically interesting theory about."<sup>56</sup> An

investigation of “truth” is only necessary on the assumption that the various statements that human beings will affirm with the honorific “true” (or its non-English equivalents) would have something in common with one another, and this premise is exactly the one that pragmatists will not grant.

Rorty argues that the impulse to search for these commonalities only makes sense against the backdrop of an idea he calls “representationalism.” This notion suggests that language works by attempting to paint a word-picture of a certain state of affairs in the universe. Under this understanding, truth can be little else but a successful “mirroring” of the world; a statement is true only to the extent that it performs this function with regard to the particular chunk of the world it is supposed to reflect. Rorty argues, however, that the idea that language represents reality is less a description than a metaphor. The ancient Greeks, he claims, seized upon the image of “knowledge as *looking* at something (rather than, say, rubbing up against it, or crushing it underfoot, or having sexual intercourse with it.)”<sup>57</sup> A significant consequence of understanding knowledge as being like vision is that it introduces the notion that its function is to portray the outside world as clearly as possible. Assuming such a model of knowledge, subsequent philosophers constructed an elaborate intellectual edifice under which the questions of epistemology—those that ask how it can be that our ideas and language accurately reproduce something fundamentally unlike them—are inevitable. But reject this essentially arbitrary way of thinking, and the same issues suddenly appear extraneous or inapplicable.

[T]o think of knowledge [as something] which presents a “problem,” and about which we ought to have a “theory,” is a product of viewing knowledge as an assemblage of representations—a view of knowledge, which...was a product of the seventeenth century. The moral to be drawn is that if this way of thinking of knowledge is optional, then so is epistemology, and so is philosophy as it has understood itself since the middle of the last century.<sup>58</sup>

One implication of the rejection of representationalism, though, is unsettling: the commonsense understanding of truth itself collapses. No familiar account of the meaning of truth can survive the insight that language does not, in any direct sense, “confront reality.”

Can true beliefs or sentences be treated on the model of realistic portraiture? Obviously some sentences can, at least *prima facie*, be so treated—for example, “The cat is on the mat.” There are many other cases, such as the sentence “Neutrinos have no mass” or “The pursuit of scholarly truth requires academic freedom,” to which the notion of “parts of the world” has no evident application.<sup>59</sup>

Thus true statements, in Rorty’s view, are not those that correspond to reality. At the heart of the pragmatist tradition is the claim that true statements, instead, are those that can be justified to one’s peers, a claim which will be taken up more fully in the next section. Since standards of justification are relative to the purposes and needs of various groups of people and are likely to change over time,\* truth can only be what Rorty likes to call “locally valid,” that is, dependent upon a variety of factors that might change from one time or place to another. “[J]ustification,” argues Rorty, “is not a matter of a special relation between ideas (or words) and objects, but of conversation, of social practice.”<sup>60</sup>

The upshot of this argument would understandably lead many to think it has little import beyond intramural squabbles within university philosophy departments. But political theory is a branch of philosophy, and the Liberal emphasis on the eternal value of liberty and equality is exactly the sort of idea for which pragmatism has little use. “[T]here is no human dignity that is not derivative from the dignity of some specific

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\* Anyone who doubts this should consider that the best available scientific evidence suggested, at different times in U.S. history, that blacks are inferior to whites and that women were likely to swoon from excess emotional or physical exertion. In supplanting these claims, the pragmatist urges that we not fall victim to the self-congratulatory illusion that we have replaced a flawed scientific methodology with one that allows us to view reality more accurately. Instead, the current emphasis on scientific research as a tool for prediction and control of the natural world has over time supplanted an older conception that granted a much greater respect to the perpetuation of the given social order.

community, and no appeal beyond the relative merits of various actual or proposed communities to impartial criteria which will help us weigh those merits.”<sup>61</sup> In urging the rejection of claims to broad ahistorical truths, the political import of these ideas reaches beyond Rorty’s own statement “that neither utilitarianism nor pragmatism *entails* a commitment to [L]iberalism,”<sup>62</sup> to suggest that pragmatism demands an abstention from it.

The rejection of Liberalism on pragmatist grounds reframes the question of democratic capitalism. Instead of asking whether our ideas enable institutions that maximize freedom or equality, we should inquire as to whether they are of service in building the society in which we want to live. Thus Rorty supports the project of constructing a Liberal community, but not that of trying to construct a philosophical framework to justify it. Such a society, in Rorty’s view, would be one that fostered debates between competing notions of the good. “A liberal society is one which is content to call ‘true’ whatever the upshot of such encounters turns out to be.” As such, it would render explicit the often subterranean role of justification in our lives, opposing any attempt to make “certain topics and certain language games...taboo” or to ensure that “certain questions were always in point, that certain questions were prior to certain other, that there was a fixed order of discussion, and that flanking movements were not permitted.”<sup>63</sup>

When framed this way, democracy emerges as the political manifestation of pragmatism. Its function of brokering between competing interests allows any given concept of value to become the dominant (or “true”) one in a given society. Capitalism, however, does not fare as well. In restricting the expression of value to one specific arena—the price one is willing to offer or accept for a given good—it limits society’s ability to enshrine whatever concept of value its citizens might favor at a given time.

While a polity might choose, through the democratic process, to install market mechanisms in order to achieve some of its goals, capitalism has no meaningful claim to trump, or even contest, the process of democracy. Democratic capitalism is, in short, more democratic than capitalist.

### **THE HUMAN SERPENT**

But what is pragmatism, and what support does it offer for such sweeping claims? In today's intellectual climate, the pragmatist approach might be better understood as a "movement," as opposed to a "school." Its many adherents—among them philosophers, jurists and literary critics—share an outlook rather than a creed. To famed scholar of religion and African-American studies Cornel West, pragmatism's "major themes of evading epistemology-centered philosophy, accenting human powers, and transforming antiquated modes of social hierarchies in light of religious and/or ethical ideals make it relevant and attractive."<sup>64</sup> These characterizations, however, employ such broad strokes that they fail to note that pragmatism is, first and foremost, a philosophy, and that as such it is animated by a rigor and specificity that is often missing when other scholarly disciplines deal with theoretical matters. Intellectual historian David A. Hollinger has noted the prevalence of this trend, under which pragmatism "is flattened into a style of thought characterized by voluntarism, practicality, moralism, relativism, an eye toward the future, a preference for action over contemplation, and other traits of the same degree of generality."<sup>65</sup> Pragmatism is, quite simply, more sophisticated, intricate and demanding than its most common characterization allows, and it is only as a philosophy, not an intellectual trend, that it speaks to the issue of democratic capitalism.

Most often credited to the mathematician and philosopher Charles Sanders Peirce (1839-1914), pragmatism has claimed as its most influential proponents William James (1842-1910), John Dewey (1858-1952) and, of course, Rorty today. Though the

characterization of pragmatism as a nexus of loosely-connected positions is not unfair as far as it goes, at the philosophy's center is a position advanced by Peirce in his seminal 1878 essay "How to Make Our Ideas Clear:" that the content of a belief is interchangeable and identical with the likely consequences of holding it. "Consider what effects, which might conceivably have practical bearings, we conceive the object of our conception to have. Then, our conception of these effects is the whole of our conception of the object."<sup>66</sup>

What does this mean? Consider Peirce's own example of the claim that an object is "hard." One who says this of, say, a diamond means that when applying pressure to the diamond, an observer expects to encounter a great deal of resistance. According to Peirce's postulate, then, the claim of the diamond's hardness is interchangeable with this prediction, and the former can *mean* nothing other than the latter. To clarify his meaning, Peirce juxtaposes the rather commonplace statement of the diamond's hardness with another, more surprising one—that it has the consistency of chocolate pudding until bumping up against something else, at which point it instantaneously solidifies—and professes no difference in the meaning of the two statements. Finding no difference in the predictable range of possible experiences afforded under each claim, Peirce argues that the two statements are therefore indistinguishable in their meanings.

Peirce's overall aim in establishing this principle was twofold: the first, reflected in the title of the original article, is to urge a certain clarity in thinking. But of greater significance is his insistence that his method demonstrates many seemingly prominent issues to be of no great import. Specifically, many of the intellectual problems that have defined Western philosophy present alternatives that bespeak of no real difference in terms of experiential expectations.

The truth is, there is some vague notion afloat that a question may mean something which the mind cannot conceive; and when some hair-splitting philosophers have been confronted with the absurdity of such a view, they have invented an empty distinction between positive and negative conceptions, in the attempt to give their non-idea a form not obviously nonsensical.<sup>67</sup>

Consider, for example, the perennial chestnut of free-will. It is difficult to imagine any experience of ours that would change if philosophers were to definitively prove that we did or did not possess that attribute. If all of our actions were discovered to be determined, for example, it is difficult to imagine that we would no longer wish to hold criminals accountable for their misdeeds. Thus, from its very inception, one significant arrow in pragmatism's quiver was the idea that some seemingly important issues could simply be abandoned.

Though Peirce's point could hardly be more specifically philosophical, it has significant implications for our more political purposes. For the concerns that animate Liberal political theory are exactly of the sort that the pragmatist principle urges us to reject. Issues along the lines of "Are human beings *really* endowed with inalienable rights?", "Is it liberty or equality that should serve as the foundation of government?", and "How can political institutions manifest a respect for every citizen's liberty if it honors some freedoms while curtailing others?" all admit of alternatives that cannot be differentiated on the basis of experience. It is impossible to imagine what possible consequences could emit from a proposition like "Human beings *do* have inalienable rights" that would allow one to choose between it and its negation. Thus Peirce's insistence that many traditional problems are best ignored rather than solved very much applies to the issues that define the Liberal tradition.

The greatest philosophical import of Peirce's initiation of pragmatism, however, was the challenge it offered to the position known as realism. This doctrine holds, along

with common sense, that the world outside of the human mind exists as a specific and determinate reality, and that nothing that goes on inside the human mind can alter the nature of that reality. By itself, realism necessitates no specific position on whether or not we can know anything about the world beyond the horizons of our own minds; it only maintains that this independent reality exists and that its qualities are determined by something other than human mental states. Opponents of realism espouse many different doctrines—solipsism, idealism, relativism, existentialism and so on—but all believe that human beings, whether voluntarily or involuntarily, consciously or unconsciously, individually or collectively, have some power to determine the content of reality itself. Peirce did not equivocate in his support for realism, arguing that “[t]hat is *real* which has such and such characters, whether anybody thinks it to have those characters or not.”<sup>68</sup> But later pragmatists would break with the theory’s founder in eventually finding anti-realism to be central, if not definitive, of the body of ideas that spring from Peirce’s original principle.

James’s work was instrumental to this new understanding. Always deferential to Peirce as the originator of pragmatism, James’s articulation of its basic principle essentially reiterated the original Peircean theme. “There can *be* no difference anywhere that doesn’t *make* a difference elsewhere—no difference in abstract truth that doesn’t express itself in a difference in concrete fact and in conduct consequent upon that fact, imposed on somebody, somehow, somewhere, and somewhen.”<sup>69</sup> But from this initial observation, James took pragmatism in a decidedly anti-realist direction. Unlike Peirce, who allowed that pragmatism was agnostic on this issue, James correctly saw that pragmatism inexorably implied a specific epistemological stance that is, in fact, quite hostile to realism. This new direction for Peirce’s principle came when James announced that pragmatism also serves as a theory of truth.



It is not hard to say what a theory of truth is: it is a view that would articulate the specific conditions under which a given sentence would be labeled “true” or “false.” What might be less clear is why such a theory is needed. Is there really a great difficulty in knowing what makes a sentence be true or false? In fact, there is. It is very comforting to believe that a sentence X is true if and only if the conditions that X describes actually exist in the world. Thus “San Francisco is in California,” is true because the designated boundaries of the city lie entirely and unobjectionably within the borders that have been ascribed to the state. But many common sentences do not admit of such an easy explanation. Assume, for example, that I have a bank account with one hundred dollars in it. Under this condition, when I say, “There are one hundred dollars in my bank account,” I am telling the truth. But what exactly is it that makes this sentence be true? The most obvious answer—the fact that there is one hundred dollars worth of cash in the bank’s vault with my name on it—is unfortunately incorrect. My deposit could have been by way of a check or some electronic process, and in any case one of the bank’s primary functions is to loan deposits like mine to its other customers—even if I had originally deposited cash, those bills would no longer be there. But what other fact (or set of facts) about the world could explain the truth of that sentence? It is difficult to say.

Yet Peirce’s principle clearly has implications for this question, whether he chose to acknowledge that fact or not. Before we can determine whether or not the sentence about the money in the bank is true or false, we must first determine what it means. By applying the pragmatic principle, it quickly becomes clear that the meaning of the sentence above is far from obvious. If I do not mean that there is a pile of money at the bank with my name on it, then what *do* I mean when making this claim? To determine the content of such a sentence, Peirce would have us ask, “What experiences would one

expect to have if that sentence were true?” By way of reply, I might respond that I would be able to purchase something priced up to that amount with a debit card; to receive some sum of money up to or including one hundred dollars when requesting it from the bank; to see the number “\$100.00” on my balance statement from the bank, and the like. According to Peirce, when I say that I have one hundred dollars in the bank, I *mean* that I can reasonably expect to have the above experiences.

But James took the principle a step further by making a fairly obvious logical connection: if the claim regarding the one hundred dollars is interchangeable with the legitimate expectation of the above-listed experiences, then it must be the case that if I have the relevant experiences (or have reason to believe that I will or could have them) then the statement is true, and if I do not, it is false. Under this interpretation, Peirce’s principle itself generates criteria by which one can determine whether a statement is true or false. It is, in other words, a theory of truth.

What, then, is pragmatism’s theory of truth? James’s most succinct statement of his interpretation of the philosophy took the form of a series of eight lectures delivered in 1906 and 1907, whose popularity was such that they were published by the end of the latter year, under the name *Pragmatism: A New Name for Some Old Ways of Thinking*. In the essay entitled, “Pragmatism’s Theory of Truth,” James suggested that this perennial philosophical issue could be put to bed with an application of the pragmatic method.

Pragmatism, on the other hand, asks its usual question. “Grant an idea of belief to be true,” it says, “what concrete difference will its being true make in any one’s actual life? How will the truth be realized? What experiences will be different from those which would obtain if the belief were false? What, in short, is the truth’s cash-value in experiential terms?” The moment pragmatism asks this question, it sees the answer: *True ideas are those that we can assimilate, validate, corroborate and verify. False ideas are those that we can not.*<sup>70</sup>

James himself points out that this formula sounds almost trivial, and he is correct to note that few would disagree with it, at least at first; it certainly is impossible to imagine a true idea that cannot be assimilated, validated, corroborated and verified. But at a closer look his claim is far from uncontroversial. For we tend to assume that statements or ideas can be so incorporated into our lives *because* they are true. Under this interpretation, the fact that an idea can be assimilated and so forth is merely a side-effect of its truth. According to this way of thinking, it would be at least theoretically possible, for example, that a true idea could exist that could not be so incorporated; say, an idea that had never occurred to anyone, or that is ahead of its time. But in claiming that truth is *identical* with this incorporating function and not a corollary to or result of it, James hitched the wagon of pragmatism to the idea that truth is substantially determined by human beings: it is “made” and not “found.”

For pragmatists, the meaning of an idea is defined by the experiences it will bring about. If one furthermore presumes, quite reasonably, that people prefer positive experiences to negative ones, then they will consistently adopt the beliefs that bring about the most positive experiences. This argument could lead James to conclude that truth is “*one species of good*, and not, as is usually supposed, a category distinct from good, and co-ordinate with it. *The true is the name of whatever proves itself to be good in the way of belief, and good, too, for definite, assignable reasons.*”<sup>71</sup>

But whether or not an idea is good to believe will depend to a large degree on the beliefs that a person already holds.

The individual has a stock of old opinions already, but he meets a new experience that puts them to a strain...The result is an inward trouble to which his mind till then had been a stranger, and from which he seeks to escape by modifying his previous mass of opinions. He saves as much of it as he can, for in this matter of belief we are all extreme conservatives. So he tries to change first this opinion, and then that (for they resist

change very variously), until at last some new idea comes up which he can graft upon the ancient stock with a minimum of disturbance of the latter, some idea that mediates between the stock and the new experience and runs them into one another most felicitously and expediently. This new idea is then adopted as the true one.<sup>72</sup>

Thus truth is in no way a direct relationship between beliefs and the world. Instead, it is significantly mediated by the content of the other beliefs with which it will likely come into contact. James, then, was entirely correct to find a humanistic conception of truth in the original pragmatist principle.

Purely objective truth, truth in whose establishment the function of giving human satisfaction in marrying previous parts of experience with newer parts played no rôle whatever, is nowhere to be found. The reasons why we call things true is [sic] the reason why they *are* true, for ‘to be true’ *means* only to perform this marriage-function. The trail of the human serpent is thus over everything.<sup>73</sup>

The conclusion is impossible to escape: pragmatism is a form of relativism.

## **PRAGMATISM AND RELATIVISM**

Relativism can be broadly defined as the idea that truth is a product of human communities, as opposed to an objective quality of the world itself. As old as the claim of the pre-Socratic philosopher Protagoras that “man is the measure of all things,” the doctrine has maintained a status at the edge of Western philosophy, neither completely vanishing nor ever gaining real acceptance. In recent decades the discomfort with relativism has occasionally registered in American popular culture, animating most notably Allan Bloom’s best-selling 1987 diatribe *The Closing of the American Mind*, which cited the doctrine as the impetus for the sad state of the nation’s intellectual life; in contemporary conservative political quarters it is routinely cited as the philosophical font of an alleged moral decline.

Relativism's generally bad reputation obscures the fact that it is arguably correct in its description of truth. Pragmatism has continuously flirted with relativism, but even James's humanistic take stops short of endorsing the doctrine. The distinction between the humanism of James and an all-out relativism rests on the role that other human beings play in the process of a person adopting an idea as true—relativists argue that the community is significantly determinant of which ideas will meet that standard, while their opponents tend to minimize or even reject this role. Not until Rorty would pragmatism openly adopt a relativistic outlook.

Of course, Rorty also refuses to identify his ideas this way. When identifying relativism with the “the view that every belief on a certain topic, or perhaps about *any* topic is as good as every other,” he can easily and correctly claim that no one “except for the occasional cooperative freshman”<sup>74</sup> holds this view. But such a definition is unfair, and Rorty's own work can show that he is rather sympathetic to a doctrine that, whatever the name, is fairly described as relativist.

I would hold that there is *no* truth in relativism, but this much truth in ethnocentrism: we cannot justify our beliefs (in physics, ethics, or any other area) to everybody, but only to those whose beliefs overlap ours to some appropriate extent...[I]t is not that we live in different worlds than the Nazis or the Amazonians, but that conversion from or to their point of view, though possible, will not be a matter of inference from previously shared premises.<sup>75</sup>

Thus the fact that it would be very difficult to convince a 15th century European peasant that the earth revolves around the sun does not mean that we live in a heliocentric universe and she a geocentric one. It does suggest, however, that the proposition asserting that the sun is the center of the solar system was once false and is now true. To claim otherwise is to violate the tenets of pragmatism: given the beliefs that she and her pre-Copernican peers hold, few, if any, experiences available to them could have

provided compelling evidence of the competing theory. If truth is intimately connected with justification, then changes in truth can say little or even nothing about the status of the world.

Rorty's point of departure on this issue lies in his insight that truth is not a property of the world, but of sentences. "The world is out there, but descriptions of the world are not. Only descriptions of the world can be true or false. The world on its own—unaided by the describing activities of human beings—cannot."<sup>76</sup> Language provides a matrix of belief into which the "raw data" of the world and sensory experience can enter, but this access to the world is filtered through our own beliefs, and the consequent priorities, categories and values they embody. Since all of our beliefs must be in *some* language, the quest for an eternal, objective truth—essentially the desire for the language that the world would speak on its own behalf—is as futile as it is incomprehensible.

The Rortyan account should not be taken to mean that the world plays no role in determining whether given statements are true. Truths are relative to human needs, but the world is not. An "object can, given a prior agreement on a language game, cause us to hold beliefs, but it cannot suggest beliefs for us to hold."<sup>77</sup> Thus the fact that the litmus paper turns blue gives a good reason to believe that the solution is an alkaline, but only against the backdrop of a set of practices, beliefs and sentences that have given meanings to those concepts. Though we might assume that the paper would still turn blue in a different age or another place, it would be foolish to conclude from that fact that this event would similarly always *mean* that the liquid has an abundance of negatively-charged ions. It could just as easily have once signified, for example, some supernatural presence.

Rorty's understanding of language as a "prior agreement" makes it clear that the fact that truth is not objective, eternal or universal does not make it arbitrary. The "hardness" of a fact is a function of the rigidity of the linguistic agreement that links a given physical stimuli to a corresponding set of appropriate vocables. For example, in the United States, people drive on the right side of the road. The fact that no one would seriously argue that this policy has some transcultural validity (that God, for example, prefers people to drive on the right), in no way alters the unambiguous *fact* that the right side is the correct one on which to drive. The "prior agreement" on how to use words in this instance is not as rigid as the one that governs how we talk about, say, the weights of objects, but is more so than the one regulating the ways we assess the quality of music. Yet the process that regulates what does and does not count as an appropriate thing to say, and what can acceptably be labeled "true" or "false," is the same in each case.

There is nonetheless an undeniable impulse to want to claim that some truths simply reflect the "way things are," and not any set of intersubjective cultural priorities. In these cases, Rorty argues, people are confusing the fairly rigid rules of usage that often characterize a given network of intersubjectively adopted beliefs with the far more haphazard process by which that culture adopted the beliefs in the first place.

This conflation is facilitated by confining attention to single sentences as opposed to vocabularies. For we often let the world decide the competition between alternative sentences (e.g., between "Red wins" and "Black wins" or between "The butler did it" and "The doctor did it"). In such cases, it is easy to run together the fact that the world contains the causes of our being justified in holding a belief with the claim that some nonlinguistic state of the world is itself an example of truth, or that some such state "makes a belief true" by "corresponding" to it. But it is not so easy when we turn from individual sentences to vocabularies as wholes. When we consider examples of alternative language games—the vocabulary of ancient Athenian politics versus Jefferson's, the moral vocabulary of Saint Paul versus Freud's, the jargon of Newton versus that of Aristotle, the idiom of Blake versus that of Dryden—it is difficult to

think of the world as making one of these better than another, of the world as deciding between them. When the notion of “description of the world” is moved from the level of criterion-governed sentences within a language game to language games as wholes, games which we do not choose between by reference to criteria, the idea that the world decides which descriptions are true can no longer be given a clear sense. It becomes hard to think that that vocabulary is already out there in the world, waiting for us to discover it.<sup>78</sup>

What languages are, in their essence, is a set of rules that govern the conditions under which it is appropriate to assert or accept a given sentence. Anyone who lives by those rules every single day, and watches everyone else doing so, could easily begin to assume that the relationship between the conditions and the sentences was imposed by the demands of reality itself. But pragmatism’s original principle leads directly to the conclusion that such an assumption would be misguided. If the content of a person’s beliefs and desires are heavily influenced by an intersubjectively determined language, and it is these beliefs and desire that determine the extent to which an idea will be “good to believe,” then truth is substantially determined by the framework into which ideas are placed by one’s culture. Pragmatism is a relativism.

### **PRAGMATISM AND DEMOCRACY**

Historian Louis Menand wrote of the pragmatists that “[t]he political system their philosophy was designed to support was democracy.”<sup>79</sup> Though the link between pragmatism and democracy is commonly asserted, it is less than clear what specific inference leads from one to the other. On the contrary, a philosophy whose primary concern is the substitution of concrete experience for empty abstractions would seem far more likely to abjure claims about the best sort of government. Pragmatist literary critic Stanley Fish, for example, argues that “[i]f pragmatism is true it has nothing to say to us; no politics follows from it or is blocked by it; no morality is attached to it or is enjoined by it.”<sup>80</sup> Taking issue with Fish’s sentiments, I will argue in this section that the Rortyan



conception of pragmatism, which I have above construed as a relativist one, yields democracy as the only legitimate political arrangement. Taking seriously pragmatism's anti-foundational conclusions requires us to find illegitimate any political arrangement based upon the implementation of a principle or set of principles, except to the extent that these principles are affirmed by the community itself. It is the community's assent, and not the principle, that grounds any legitimate political structures. When viewed this way, two conclusions emerge, both of which will be argued here. The first is that the only consistent pragmatist argument in support of democracy is an anti-foundational one. To this end, I will juxtapose Rorty's conception of democracy with the more influential approach of pragmatist John Dewey, and argue that the former is more consistent with the tenets of pragmatism. Secondly, a pragmatist anti-foundational politics justifies capitalism only conditionally—to the extent that the community sanctions it, through the democratic process. As such, democratic capitalism is philosophically tenable only as I have described it in Chapter One.

The name that is most often associated with pragmatism and democracy, however, offers a marked contrast to this line of thinking. Rather than legitimating democracy, as Rorty does, because of the lack of foundational principles, John Dewey found it to be nothing less than the *raison d'être* of human endeavors. "Among liberal intellectuals of the twentieth century," writes biographer Robert Westbrook, "Dewey was the most important advocate of participatory democracy, that is, of the belief that democracy as an ethical ideal calls upon men and women to build communities in which the necessary opportunities and resources are available for every individual to realize fully his or her particular capacities and powers through participation in political, social and cultural life."<sup>81</sup>

With regard to political ideas, Dewey essentially neglected the task of specifically connecting the dots between two concepts that he obviously held in high regard: pragmatism and democracy. Generally, however, his thought runs in two seemingly unrelated channels: the first grounds democracy on a conception of the human being as inherently communal, while the second evokes that political system as a goal that informs political decisions—the “ethical ideal” mentioned above. Rorty’s clarification (or revision) of Dewey’s social philosophy, however, rejects the first strain of thought while championing the second. In advocating a democracy without foundations, Rortyan pragmatism yields two important conclusions. The first is that the challenge that now confronts postmodern intellectuals is to learn to justify favored political arrangements without recourse to claims that they are based on culturally-transcendent values. With regard to democratic capitalism, however, Rorty’s work makes clear that the democracy can survive the fall of Liberalism in a way that capitalism cannot. Thus citizens are certainly justified in instituting market measures through the democratic process, but in any anti-foundational universe of discourse we cannot invoke Liberal principles to require that they do so. The only workable conception of democratic capitalism is the one outlined in the previous chapter, in which the citizens charge the government with running the economy, but reserve the right to define economic health and efficiency.

As defined by Dewey, pragmatism is concerned first and foremost with the nature of experience. In what might have served as a restatement of Peirce’s principle, he defines pragmatism as the idea that “things—anything, everything, in the ordinary or non-technical use of the term ‘thing’—are what they are experienced as.”<sup>82</sup> The content of experience, finds Dewey, is not nearly as obvious as many seem to think. The common philosophical error of assuming knowledge to be the paradigmatic case of experience leads directly to the false duality of realism and idealism. “For instance, I

start and am flustered by a noise heard. Empirically, that noise *is* fearsome; it *really* is, not merely phenomenally or subjectively so. That *is what* it is experienced as being. But, when I experience the noise as a *known* thing, I find it to be innocent of harm.”<sup>83</sup> While the realist would deny that this fear is actually a component of the noise, Dewey argues that experience supports no such belief.

Pragmatism’s rejection of realism is closely bound with another divergence from the philosophic mainstream. The traditional view, best expressed in the famous Aristotelian quote that “Philosophy begins in wonder,” holds that inquiry is an attempt to understand the universe in the face of its awe-inspiring complexity, rationality and beauty. In a direct refutation of this understanding, Dewey instead argued that philosophy is instead the attempt to solve a series of problems; if the world presented us only with its infinite majesty, but had never thwarted our aims, neither science nor philosophy would have developed. Ideas, then, are better understood as tools for problem-solving than as attempts to describe reality. Given this function, true ideas are the ones that make better problem-solving instruments. Since human beings themselves decide what constitutes both a problem and a solution, truth itself yields to human concerns, as Dewey expressed in a debate on the subject with famed British philosopher Bertrand Russell.

I believe most decidedly that the distinction between ‘true’ and ‘false’ is to be found in the relation which *propositions*, as means of inquiry, ‘have to relevant occurrences.’ The difference between us concerns, as I see that matter in the light of Mr. Russell’s explanation, the question of *what* occurrences *are* the relevant ones. And I hope it is unnecessary to repeat by this time that the relevant occurrences on my theory are those existential consequences which, in virtue of operations existentially performed, satisfy (meet, fulfill) conditions set by occurrences that constitute a problem.”<sup>84</sup>

Thus Dewey's emphasis on experience as a repository of meaning recasts the traditional philosophical problem of truth—"Which of our ideas correspond most closely to reality?"—as an entirely different set of concerns—"Which of our ideas can help us deal with our problems, as we understand them?" When applied politically, that question yields a new one: "Given that we want a democratic society, what view of reality is most likely to bring it into being?"

Is democracy a comparatively superficial human expedient, a device of petty manipulation, or does nature itself, as that is uncovered and understood by our best contemporaneous knowledge, sustain and support our democratic hopes and aspirations? Or, if we choose to begin arbitrarily at the other end, if to construct democratic institutions is our aim, how then shall we construe and interpret the natural environment and natural history of humanity in order to get an intellectual warrant for our endeavors, a reasonable persuasion that our undertaking is not contradicted by what science authorizes us to say about the structure of the world? How shall we read what we call reality (that is to say the world of existence accessible to verifiable inquiry) so that we may essay our deepest social and political problems with a conviction that they are to a reasonable extent sanctioned and sustained by the nature of things?<sup>85</sup>

Yet nowhere in his writings does Dewey present a simple or direct case as to why he believed democracy to be superior to other forms of government. In fact, he generally refused to acknowledge it as a form of government at all, preferring instead to view democracy as a moral ideal with applicability far beyond political institutions. "Regarded as an idea, democracy is not an alternative to other principles of associated life. It is the idea of community life itself."<sup>86</sup> Only within a democratic framework, he argues, can our experience as social beings be fully realized. Since political life is nothing more or less than the social aspect of our experience, democracy is the only meaningful or legitimate form of government.

To Dewey, politics, like everything else, can be understood only through the lens of our experiences of it. And the content of this lived experience, he claims, reveals

social and communal life to be the reality against which individuality is merely an abstraction. Not only are values and truths the product of social forces, but human beings themselves are equally so determined. “[T]he mental and moral structure of individuals, the pattern of their desires and purposes, change with every great change in social constitution. Individuals who are not bound together in associations, whether domestic, economic, religious, political, artistic or educational, are monstrosities.”<sup>87</sup>

Thus Dewey justifies democracy in two ways: as a goal of social life, and as a necessary condition of it. But clearly these cannot be simultaneously true. Beyond the logical impossibility, the fact that human beings are socially constructed cannot by itself justify democracy, for cultural forces, it would seem, could just as easily produce human beings who are not democratic at all. In feudal Europe, for example, people were presumably equally subject to the social bonds of their societies, but these constructions produced a fundamentally non-democratic people. Dewey calls upon the malleable nature of human beings as evidence for the importance of socialization, but seems to contradict himself in positioning democracy as a transcendent ideal of community against which other models are negatively judged.

Rorty addresses this problem successfully, in my view, by emphasizing Dewey’s claim that democracy represents a goal that citizens may or may not adopt, while unceremoniously dropping his position that human nature requires that they affirm it. Though Rorty often attributes his own positions to Dewey, commentators have argued that such a move constitutes less a proper deference than an illegitimate distortion of the older pragmatist’s views. In response, Rorty has admitted that he “may have gotten in the habit of construing Dewey in my own sense, and thus putting words in his mouth that he would have eschewed,” but also supplements this apology with the claim that this criticism is nonetheless misplaced. The significant issue, he argues, is not whether one

can find textual evidence that Dewey would or would not have agreed with a given point; the older philosopher's superhuman output of published works would render this possibility all but certain. Instead, with regard to Dewey's ideas, there is only one important question, and that is the extent to which any of them can be useful for us today. Thus, no matter whether others see him as "invoking" or "appropriating" Dewey's thought, in his own view Rorty is merely performing the task of "every disciple of a great philosopher to distinguish the spirit from the letter of his of her teachings."<sup>88</sup>

Rorty wholeheartedly embraces the notion that human beings are constructed and defined by the community, and even links that claim to the implementation of democracy, arguing that "[t]he conception of the self that makes the community constitutive of the self does comport well with liberal democracy."<sup>89</sup> But unlike Dewey, he does not take this idea of the self to justify democracy. In fact, nothing can "ground" the values of democratic government, if by that word one means either something like "defend beyond objection against any who might disagree" or "conclude logically from premises derived directly from a culturally-independent reality." If truth itself is relativistic and culturally-dependent, then certainly the same observation will apply to the always controversial discourse of politics. The need to "distinguish the sort of individual conscience we respect from the sort we condemn as 'fanatical'" cannot be met, in Rorty's view, by reference to values that are somehow sanctioned by a non-human reality, but only by "something relatively local and ethnocentric—the tradition of a particular community, the consensus of a particular culture."<sup>90</sup>

Rorty's ideas invoke the specter of Sartre's famous remark about the lack of philosophical foundations for politics. "Tomorrow, after my death, some men may decide to establish Fascism, and the others may be so cowardly or so slack as to let them do so. If so, Fascism will then be the truth of man, and so much the worse for us."<sup>91</sup>

Though Sartre's existentialist position is far more individualistic than Rorty's communitarian pragmatism, the two philosophies are essentially identical with regard to the question at hand. There can be no guarantee that the world of tomorrow will be one in which our values are accorded the respect that they have today, and there is further no standard by which someone living in that world could meaningfully assert anything other than a dissenting opinion against the dominant understandings of his/her time. No matter what we may think today, this hypothetical widely-assented fascism of the future will be the truth.

But to argue that political institutions can only be justified by reference to the ideas and values that currently hold sway in one's community is not to assert that no such justification is possible. Standards by which to compare cultural visions against each other unquestionably exist: communities routinely mandate, through traditions, morality, laws, language, and a host of other devices, a vision of the society that they prefer. And, of course, from time to time challenges arise that force the society to chart a new course. Political or philosophical principles are not generally the issue during these moments, though partisans will often use them to express or signify their positions. Instead, what is usually at stake is a vision of the society in which the feuding parties would prefer to live.

The idea that liberal societies are bound together by philosophical beliefs seems to me ludicrous. What binds societies together are common vocabularies and common hopes. The vocabularies are, typically, parasitic on the hopes—in the sense that the principal function of the vocabularies is to tell stories about future outcomes which compensate for present sacrifices.<sup>92</sup>

Thus by rejecting one of Dewey's central ideas—that the malleable nature of humanity justifies democracy—Rorty clarifies and strengthens the other one—that democracy is a goal rather than a method. Democracy is justified for only one reason: that those who were raised under the influence of Liberal ideas believe it to be the most

efficient vehicle for the realization of their collective goals. The fact that this formula itself sounds democratic is no coincidence: for it is anti-foundationalism, in the end, that provides the surest justification of democracy. If organizing political life around transcendent values is illegitimate, then the only justifiable system is one that executes, to the greatest extent possible, the will of the people.

Rather than despair of the abandonment of principles, Rorty argues that the appropriate philosophical response is to make explicit the fact that political doctrines cannot possibly perform the functions that people demand of them. Pragmatists argue that our deepest values are bound up with historicity and geography, but recognize that this is only a strike against them if we require the impossible: the need to ground our ideals on something other than the desires that we have for ourselves and our offspring in the future. Rorty thus urges a political reorientation rather than a philosophical overhaul: only a foundationalist need reject his/her deepest values because they are not grounded on extra-human concerns. The Rortyan hero—a “postmodern bourgeois liberal”—recognizes that the highest political calling is to “realize the relative validity of one’s convictions and yet stand for them unflinchingly.”<sup>93</sup> Given the unfamiliarity and discomfort this stance is likely to generate, Rorty’s primary goal is less to “ground” democracy than to encourage us to become comfortable asserting our belief in it without invoking philosophical support.

Democracy, therefore, is justifiable without the foundational support of Liberalism. Capitalism, however, is not. As pointed out in Chapter One, democracy allows the people the latitude, through the control of government, to bring about nearly any sort of society that it wants, which is exactly what the pragmatist abandonment of principles requires. Capitalism, on the other hand, significantly restricts this ability by directing the citizen’s expression in one comparatively narrow channel. Though



capitalism, like democracy and pragmatism, is also a humanistic system, it limits the ability of humans to collectively bring their values to bear socially, thus its more restrictive conception of value can only be validated through the democratic process. It is democracy, in short, that justifies capitalism; the latter can take whatever shape that the former gives it. American pragmatism, therefore, offers the most compelling justification of the system that U.S. political economy has long been practicing.

The previous chapter defined a specific definition of American democratic capitalism in which capitalism neither competes with nor complements democracy, but instead is subordinate to it. Here I have argued that the traditional support for these other conceptions of democratic capitalism, that of classical Liberalism, is itself philosophically compromised. The humanistic and anti-foundational tradition of American pragmatism offers a more robust defense of democracy, but cannot extend the same support to capitalism. Thus pragmatism suggests that the most defensible account of democratic capitalism is the one I have offered. This dissertation, however, turns on the assumption that this conception of U.S. democratic capitalism is not only justified, but actually the best account of the practice of democratic capitalism in the United States. The next chapter will begin this story, as they say, at the beginning, by concentrating on the reception afforded Alexander Hamilton's *Report on Manufactures* when the nation's first treasury secretary attempted to empower the government to ensure a healthy economy.

### Chapter Three: Republican Capitalism

The end of Ronald Reagan's presidency afforded the "Great Communicator" no real decline in popularity. After the conclusion of Reagan's second term in 1989, Alzheimer's disease began to impose a low public profile on the 40<sup>th</sup> president, but the nation did not forget him. Indeed, the high regard for Reagan, particularly among more conservative Americans, only continued to grow, perhaps reaching its peak only upon his death in 2004. Eight years after Reagan left office, anti-tax activist Grover Norquist founded the Ronald Reagan Legacy Project with the purpose of advocating the placement of the former president's name on at least one landmark or public building in each of the fifty states. Within a year, the group celebrated a major achievement when the Washington, D.C. airport was so rechristened. Perhaps buoyed by this success, Norquist's group unveiled an even more ambitious goal: the placement of Reagan's face on the ten-dollar bill.

But the sawbuck was already spoken for, being graced by the visage of one Alexander Hamilton. As aide-de-camp to General Washington in the Revolutionary War, delegate to the Constitutional Convention, one of the primary authors of the *Federalist Papers*, first Secretary of the Treasury, and founder of the banking and monetary systems that played a substantial role in the emergence of the United States as an economic power, Hamilton had certainly paid his dues. Yet his credentials failed to impress at least one representative of the Legacy Project, who dispatched the Founder rather quickly with a damning sobriquet. Hamilton, it would seem, was "a big-government guy."<sup>94</sup>

"The past," it has been observed, "is a foreign country: they do things differently there."<sup>95</sup> Yet the wisdom of L.P. Hartley's observation is often honored only in the breach, as evidenced by the regrettably typical application of a present-day political label

to an eighteenth-century figure such as Hamilton. Unfortunately, the tendency to incorporate historical actors into a contemporary worldview is quite prominent in the United States, and none suffer at its hands more than those who, like Hamilton, played a role in the founding of the nation itself. Though conventional wisdom would label Hamilton the “conservative” and his political nemesis Thomas Jefferson a “liberal,” both labels convey much more information about those who wish to appropriate the legacies of the past than the historical actors themselves. “If we demand from the past crude slogans and facile answers,” lamented historian Daniel Boorstin in his book on Jefferson, “we shall get little more than we ask.” We cannot, he argued, “teach the moral of history without teaching history itself.”<sup>96</sup>

The nation’s early heroes are, quite simply, not progenitors of contemporary values, and this is particularly so with regard to democratic capitalism. With the possible exception of Thomas Paine, none of the prominent figures of the American Revolution could be called a democrat, and capitalism was two generations away from attaining any prominence. Fred Baumann, who has edited one of the few books on democratic capitalism itself, is certainly correct to point out that those who wish to understand “the relation between our political and our economic principles...must return to the fundamental choices that were made at the very founding of the regime.”<sup>97</sup> But these decisions were simply not made among alternatives that would have made sense to us today. Instead, they were largely seen as referenda on the meaning of a single political philosophy. The founders and framers were uniformly motivated not by the nascent Liberalism of their day, but by a long-dead ideology known to historians as “republicanism.”

As an intellectual and political ideal, we can confidently declare in hindsight that republicanism would dominate American thought for the rough half-century between the

Revolutionary period and the rise of Jacksonian democracy, which itself was an attempt to adapt republican theoretical categories to changing circumstances. But from the perspective of these early national participants, the fate of republicanism seemed far from assured. In a furious debate about the direction of the new nation, two rival camps, who came to be known somewhat confusingly as the “Federalists” and the “Republicans,”\* emerged to form the first political parties in the United States. United behind their standard-bearer Thomas Jefferson, the Republicans arose in opposition to what they perceived as the anti-republican drift of the Washington administration. In particular, they resisted the ideas and influence of Hamilton, who was to become the most significant figure in Federalism before his untimely death in 1804. Though the Federalists were the dominant political force for the first decade after the adoption of the Constitution, after Jefferson’s election to the presidency in 1800, the party would never again wield national influence. “[B]y the 1820s,” writes historian Andrew Shankman, “the entire American world was Jeffersonian.”<sup>98</sup>

The republicanism that enjoyed this widespread eighteenth-century consensus, then, is foreign to the political sensibilities of the contemporary American. Just as the modern-day Liberals of today’s United States can still find much about which to argue,

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\* Any political terminology used to describe this period will be unsatisfactory. All political actors professed a great veneration for “republican” virtue, but not all of those would later be members of the Republican party. To avoid confusion, I will refer to the political ideology with a lower-case “r,” and capitalize the proper name of the party. Similarly, only some of those “Federalists” who had battled the “anti-Federalists” over the merits of the Constitution would later align with the party of that name. To a very great degree, those who supported Hamilton would later become Federalists and their opposite number Republicans. But referring to them this way with regard to the period of the Washington administration is historically inaccurate, as these parties did not then exist. The best solution, and the one I will use here, appears to me to be the one advocated by Richard E. Berg-Andersson on his election-related website, *The Green Pages*. Berg-Andersson suggests that the most accurate nomenclature for the period 1789-1797 would be either “administration” or “opposition,” with the understanding that these designations are better understood as “factions” than “parties.” Richard E. Berg-Andersson, “*a Brief History of American ‘Major Parties’ and the ‘Two-Party’ System in the United States*” [website] (May 21, 2001 [cited February 25 2006]); available from <http://www.thegreenpapers.com/Hx/AmericanMajorParties.html>.

eighteenth century debates were substantially oriented around the question of which political and economic policies were “truly” republican. The most significant such controversy for our purposes concerns Hamilton’s *Report on the Subject of Manufactures*, in which the Treasury Secretary argued, against the prevailing republican sentiment, that manufacturing, and not only agriculture, must play an important role in the economy of the new nation.

The *Report on Manufactures* presented a stark contrast to the American people, or more appropriately, to the elected representatives of a tiny fraction of those people. In the service of national financial solvency, Hamilton’s previous reports had constructed an elaborate and interlocked financial “system” in which the government was a prominent partner, and advanced a radical new theory of “loose” Constitutional interpretation in order to justify it. Opposition to this system, led in Congress by James Madison and more stealthily by Jefferson from within Washington’s cabinet, grew among those who found it to be a corrupt giveaway to the economic elite, feared the prominent role for government and objected to a nationalist agenda itself. Facing this growing hostility, Hamilton submitted the *Report on Manufactures*, the most strongly offensive of all the reports, and the only one that led to no significant government action. Today, however, nearly every commentator considers the document to be brilliantly argued, and virtually all of its provisions are common practice.

Thus the hostile reception to the report, and to Hamilton’s project more generally illustrates a great deal about republicanism itself. The *Report on Manufactures* is quite clear about its desire to use government power to stimulate economic results that would further the goals of nationalism. Those who opposed it, however, were no less attracted to the market itself; they too had hoped to use the economy to further an agenda—a republican one. From the standpoint of democratic capitalism, then, two significant

conclusions emerge from a study of the hostile response to the *Report on Manufactures*. The first is that at the very beginning of the American nation, neither of the two major political outlooks advocated against government action on the basis that the market should be immune from such politicking. The second is that capitalism was largely antithetical to the spirit of republicanism; that ideology had to weaken substantially before a truly capitalist economy could begin to grow.

In the founding period, however, republicanism was so prevalent that those who questioned or opposed it would not have characterized themselves as doing so, but merely of being better or truer republicans. Thus this chapter will begin with an overview of republicanism itself, before taking a more detailed look at the state of American political economy at the time of the *Report on Manufactures*.

#### **WHAT WAS REPUBLICANISM?**

Republicanism renders the presumptions, analyses and prescriptions of the American founding generation irreducibly foreign to the political mindset of the contemporary citizen of the United States. Yet the differences between the political thought of our own day and that of the Revolutionary and early national periods are obscure enough that professional historians did not see them for many generations. The current wave of republican revisionism is generally credited to a significant trio of books: Bernard Bailyn's *The Ideological Origins of the American Revolution*, Gordon Wood's *The Creation of the American Republic, 1776-1787* and *The Machiavellian Moment*, by J.G.A. Pocock.<sup>99</sup> Arriving in the late 1960s and early 1970s, each of these works concerned itself with situating the political thought of the founding generation outside of its traditional Liberal home.

Before the 1960s, the longstanding conventional wisdom of the Founders' Liberalism was so prominent as to have been distilled into an oft-quoted Latin slogan,

*“Locke et praeterea nihil”* (“Locke and nothing else”). Robert Shalhope, in his chronology and synthesis of the republican challenge, offered the following characterization of the older view.

Republican authors of importance were those of the English Civil War, but their ideas were dead until after the American Revolution; John Locke’s ideas dominated American thought; and the great impetus to republicanism came from Thomas Jefferson in the post-Confederation period. Scholars assumed that republicanism represented simply a form of government; no hint of republicanism as a dynamic ideology assuming moral dimensions and involving the very character of American society appeared in these early studies.<sup>100</sup>

Thus the traditional outlook recognized the existence of republicanism, but minimized its intellectual force while placing whatever influence it did have in a later time period. Republicanism was not a significant factor in, say, motivating Revolutionary fervor or animating the thinking of the Constitutional Convention. As such, it simply did not play a central part in the major events that originally defined American political thought and identity.

The new wave of writers, however, rejected this interpretation in favor of the idea that the dominant political ideology of the American Revolution and early national period was not the emerging Liberalism of John Locke, but a republicanism that dates at least as far back as Renaissance-era Florence, one transmitted to the colonists via the “Country Party” thinkers of the English Civil War. In *The Machiavellian Moment*, the latest of the three books mentioned above, Pocock could essentially proclaim a new historical consensus.

The American Revolution, which to an older school of historians seemed a rationalist or naturalist breach with an old world and its history, now appears to have been involved in a complex relation both with English and Renaissance cultural history and with a tradition of thought which had from its beginnings confronted political man with his own history and

was, by the time of the Revolution, being used to express an early form of the quarrel with modernity.<sup>101</sup>

Those historians who shared Pocock's impulse to temper or reject the conventional wisdom did so on every point. They would find that for eighteenth-century thinkers, republicanism was not merely a form of government, but a full-blown philosophy; that this ideology held sway long before the revolution, and indeed should be considered one of its causes; and that, consequently, the Liberalism of John Locke was not the primary intellectual current running through the American Revolution. It is perhaps this last point which has been argued most vociferously. Locke's political work, points out Daniel Rogers, "competed for place with those of scores of rival authorities in eighteenth- and nineteenth-century Anglo-America."<sup>102</sup> Indeed, historian John Dunn argued that Locke's main claim to fame during this period was that of being the empiricist epistemological theorist, not the social contract philosopher who wrote the *Second Treatise on Government*. "All through the eighteenth century, its reputation trailed that of his major philosophical work, *An Essay Concerning Human Understanding*."<sup>103</sup> A particularly amusing manifestation of the vigor with which historians have downgraded Locke's influence on the revolutionaries comes from Gary Wills, whose *Inventing America* argued convincingly for the influence of Frances Hutcheson's "moral sense" philosophy on Jefferson's original conception of the *Declaration of Independence*. Along the way to making this point, Wills asserts and defends, in painstaking detail, the claim that it is at least possible, and perhaps likely, that Jefferson never bothered to replace his copy of the *Second Treatise* after the original was lost in a fire.<sup>104</sup>

Thus the most direct influence upon the American revolutionaries was not the writings of John Locke, but a tradition of resistance to the English monarchy that had grown up around the events of the English Civil War and Glorious Revolution. The



eighteenth-century political writers who gave rise to this movement were known as known as “country party” thinkers or “commonwealthmen,” and include John Trenchard and Thomas Gordon (writing together under the name “Cato”); Benjamin Hoadly; Robert Molesworth; Henry St. John, Viscount Bolingbroke; and Frances Hutcheson,<sup>105</sup> as well as older English Whigs Algernon Sydney, James Harrington and Locke himself. This tradition, rather than a Hartzian Liberalism, is the one that animated and motivated the American revolutionary generation.\* “To say simply that this tradition of opposition thought was quickly transmitted to America and widely appreciated there,” wrote Bailyn, “is to understate the fact. Opposition thought, in the form it acquired at the turn of the seventeenth century and in the early eighteenth century, was devoured by the colonists.”<sup>106</sup>

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\* Of course, this strict dichotomy of Liberal versus republican is almost certainly overdrawn. Though Pocock argued that “the interpretation put forth by Bailyn and Wood altogether replaces that of Boorstin and Hartz, who seem to have held that there was no ideology in America, because ideology could be produced only by Old World social tensions which had not been transplanted,” those in whose name he makes this claim seem less willing to go that far. According to Bailyn in *Ideological Origins*, “[t]he classics of the ancient world are everywhere in the literature of the Revolution, but they are everywhere illustrative, not determinative, of thought...More directly influential in shaping the thought of the Revolutionary generation were the ideas of Enlightenment rationalism.” Only after naming the British common law tradition as a *third* significant intellectual influence does he venture to identify the most important strain as that of the “draftsmen of a ‘country’ vision of English politics.” Even while arguing for the primacy of republican intellectual constructions, Bailyn does not imply that other traditions had no influence; the former “brought these disparate strands of thought together,” and even “overlapped” with them, but republicanism was nonetheless “distinct in its essential characteristics and unique in its determinative power.” Fifteen years after the original publication of *The Creation of the American Republic*, Gordon Wood would write that “[n]one of the Founding Fathers ever had any sense that he had to choose or was choosing between Machiavelli and Locke. Jefferson, for example, could believe simultaneously and without any sense of inconsistency in the likelihood of America’s becoming corrupt and in the need to protect individual rights from government...Although the Founding Fathers never self-consciously conceived of classical republicanism as the coherent tradition we’ve created, they at least talked about ‘republicanism’ and invoked ‘republican principles’ in their polemics.” Though perhaps not as stark as some historians might make it seem, however, the distinction between Liberalism and republicanism is nonetheless a real one, and one that bears significantly upon our subject. J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, New ed. (Princeton, N.J. Woodstock: Princeton University Press, 2003), 509., Bernard Bailyn, *The Ideological Origins of the American Revolution*, Enlarged ed. (Cambridge, MA: The Belknap Press of Harvard University Press, 1992), 26, 34-35. and Gordon Wood, “Ideology and the Origins of Liberal America,” *William and Mary Quarterly* 44, no. 3 (1987): 634.

With regard to republicanism, however, identifying its major exponents and influences appears to be much simpler than defining its actual content. Though a broad consensus now exists about the centrality of republicanism in Revolutionary thought, one can cite far less agreement about the precise meaning of the term. The word was vaguely defined even in the eighteenth century, in many cases an honorific that both sides of a given debate would claim as their own. Historian Linda Kerber writes that “[u]sually republicanism was simply what monarchism was not.”<sup>107</sup> Yet in broad strokes the term represented at least somewhat definitively three ideas: the rejection of monarchy, aristocracy and other hierarchal forms, the assumption that liberty was quite fragile in the face of the corrupting influence of power, and the attendant centrality of virtue as a necessary bulwark against such untoward influences. Robert Shalhope, whose 1972 article was quoted above to summarize the prevailing pre-republican historiographic view, returned to the subject a decade later and offered this summary of republicanism itself.

Believing that history revealed a continual struggle between the spheres of liberty and power, the American revolutionaries quickly formed a consensus in which the concept of republicanism epitomized the new social and political world they believed they had created. Preserving a republican polity meant protecting liberty from the ceaseless aggression of power. In addition, Americans believed that what made republics great or ultimately destroyed them was not the force of arms but the character and spirit of the people. Public virtue, as the essential prerequisite for good government, was all-important. A people practicing frugality, industry, temperance, and simplicity were sound republican stock, while those who wallowed in luxury were corrupt and would corrupt others. Since furthering the public good—the exclusive purpose of republican government—required the constant sacrifice of individual interests to the greater needs of the whole, the people, conceived of as a homogeneous body (especially when set against their rulers), became the great determinant of whether a republic lived or died. Thus republicanism meant maintaining public and private virtue, internal unity, social solidarity, and vigilance against the corruptions of power.<sup>108</sup>

Shalhope's characterization is long, but the very foreignness of republicanism to today's political sensibilities renders such a detailed description necessary. His account begins where the Revolutionaries' did: not with a moral or political principle, but with a conclusion based upon historical observation. The historical aspect of republicanism is quite significant: without it, the links between the various republican propositions are logically rather strained. The very name "republicanism," in fact, reflects the fundamental preoccupation of the early Americans with the Greeks and Romans. "Most conspicuous in the writings of the Revolutionary period," wrote Bailyn, "was the heritage of classical antiquity."<sup>109</sup> Wood seconded this point and developed it further. "There was...for all Whigs, English and American, one historical source of republican inspiration that was everywhere explicitly acknowledged—classical antiquity, where the greatest republics in history had flourished."<sup>110</sup> Yet the Commonwealthmen, and by extension their American heirs, were less concerned with the glories and triumphs of Athens, Sparta and Rome than with their eventual declines. Aiming to diagnose the ills that they found in contemporary English politics, eighteenth-century republicans were in the market for a cautionary tale rather than an exemplary model. "The history of antiquity," wrote Wood, "thus became a kind of laboratory in which autopsies of the dead republics would lead to a science of social sickness and health matching the science of the natural world."

And Americans found a consistent explanation, according to Wood, for the success and failure the classical civilizations.

It was not the force of arms which made the ancient republics great or which ultimately destroyed them. It was rather the character and spirit of their people. Frugality, industry, temperance and simplicity—the rustic traits of the sturdy yeoman—were the stuff that made a society strong. The virile martial qualities—the scorn of ease, the contempt of danger, the love of valor—were what made a nation great.

Most often, the Revolutionaries referred to these positive attributes collectively as “virtue.” This term’s opposite was “luxury,” a word which then had none of the positive connotations with which it is associated today, and signified naught but perniciousness in its effects. “Luxury...was what corrupted a society: the love of refinement, the desire for distinction and elegance eventually weakened a people and left them soft and effeminate, dissipated cowards, unfit and undesiring to serve the state.”<sup>111</sup>

Virtue, in short, was that which predisposed a person to act for the benefit of the society at large, while vice, by definition, prompted a person to consider his/her own welfare above that of others. Wood writes that “politics was conceived to be not the reconciling but the transcending of the different interests of the society in search of the single common good.”<sup>112</sup> When understood this way, the proposition that a stable and healthy republic is one filled with virtuous people is axiomatic or tautological: such people, by definition, are those who only act to improve the position of the polity itself. But this easy conflation of categories rests upon an important assumption that many today would dispute: that the pursuit of self-interest is at odds with promoting the good of the state.

Though the line that differentiates the republicanism animating this period from the then-nascent Liberalism that would come to define the political and cultural life of the United States may be a blurry one, it is most clear at this particular point. The freedom Liberalism champions is primarily the unimpeded ability to pursue one’s own self-interest. Notwithstanding the fundamental challenge of enacting Liberal ideals—that of allowing this exercise of liberty for all people simultaneously—it is nonetheless a definitive tenet of the tradition that the increased ability of individuals to pursue their self-interested agenda is, all other things being equal, an unmitigated social good. Yet

American republicans of the late eighteenth century would not have granted this claim, for at the heart of this ideology is a foreign conception of liberty itself.

Bailyn argued that the colonial conception of liberty is inseparable from the related characterization of power. Again, one should not make the mistake of imposing on the past the categories and understandings of the present. In contemporary language, “power” is situational in its emotional connotation. For any one person to be “empowered” is for that person to obtain a liberty that he/she did not before possess (one that need not have been gained at the expense of someone else); at the same time, the power of, say, a totalitarian dictator is something to be feared. The ambiguity of this term is absent from the republican mindset, which found power to be nothing but a frightening, but unfortunately necessary, part of human experience. “‘Power’ to them meant the dominion of some men over others, the human control of human life: ultimately force, compulsion...Most commonly the discussion of power centered on its essential characteristic of aggressiveness: its endlessly propulsive tendency to expand itself beyond legitimate boundaries.”<sup>113</sup>

These “legitimate boundaries,” of course, were those that delineated the realm of liberty. Thus the two ideas were inseparable in republican discourse, and liberty could be little more than the prey and victim of power. It is “always weak, always defensive, always, as John Adams put it ‘skulking about in corners...hunted and persecuted in all countries by cruel power.’”<sup>114</sup> Moreover, another core tenet of republicanism was the belief that human beings were simply not capable of refusing the seductions of power. “[T]he point they hammered home time and again, and agreed on—freethinking Anglican literati no less than neo-Calvinist theologians—was the incapacity of the species, of mankind in general, to withstand the temptations of power...Power always and

everywhere had had a pernicious, corrupting effect upon men.”<sup>115</sup> Thus the very nature of human existence was such that liberty exists only in a fragile and precarious state.

To modern ears, however, this analysis makes little sense. While it is certainly true that one person’s power can be a threat to the liberty of another, and vice-versa, that claim is not the same as saying that power, in and of itself, is a threat to liberty. In the modern Liberal worldview, power and liberty are too closely connected to admit of such a drastic contrast. Power can be little else but the unrestrained ability to follow one’s own desires, i.e., a form of liberty. At the same time, freedom consists of the power to do some specific thing, and it is power—whether it be the individual’s own or that of the state—which carves out a zone in which this potential can safely be realized. Thus the two concepts are intimately associated in the modern mind, and it is difficult to see how power, by its very nature, can be a threat to liberty.\* Nonetheless, this position is exactly the one held by American republicans. This perspective is rooted in a fundamentally different conception of what freedom itself is, and these differing perspectives account for perhaps the most significant divergence between republican and Liberal thought.

Americans of the Revolutionary and early national period did not view liberty in individual terms. Liberty was a property that characterized (or failed to characterize) the people as a whole, a collective attribute that the people must jealously guard against the encroachments of the rulers. For the American colonists, Bailyn wrote, “[l]iberty was not...as it is for us, professedly the interest and concern of all, governors and governed alike, but only of the governed. The wielders of power did not speak for it, nor did they naturally serve it.”<sup>116</sup> So a ruler who levied a tax or impressed citizens into the army

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\* One might point out as well that it is a central feature of the Liberal social contract tradition that the alienation of one’s own power to the state is a necessary condition for the exercise of liberty. The lack of interest among republicans in this point adds further weight to the claim of their relatively small interest in Locke himself.

simply could not be restricting the liberty of some for the sake of others, or even for the sake of the polity as a whole; by its very nature, such an action would be understood only as the expression of power.

Moreover, since liberty is the *kind* of thing that can only be held by a people, rather than a collection of individual persons, republicans were not troubled by the possibility of clashing liberties, or the opposition between the good of the people and the fair treatment of individuals. Gordon Wood summarizes this view:

Individual liberty and the public good were easily reconcilable because the important liberty in the Whig ideology was public or political liberty. In 1776 the solution to the problems of American politics seemed to rest not so much in emphasizing the private rights of individuals against the general will as it did in stressing the public rights of the collective people against the supposed privileged interests of their rulers.<sup>117</sup>

Thus in the same way that republican ideology necessarily found a ruler who acted against the people to be motivated by a lust for power, it characterized a citizen who found his/her interests in opposition to those of “the people” as operating not in the name of liberty, but of vice. Since liberty is a collective rather than a personal affair, it is not served by allowing individuals to pursue their own private concerns. Only a person possessed of the virtuous qualities inculcated in a healthy republic would know the difference between the willful protection of the people’s liberties and the selfish pursuit of power, and possess the wherewithal to resist the latter.

From the republican standpoint, then, the purpose of social organizations is not to set up conditions under which each person can most effectively pursue his/her own vision of the good life. Nor can government, the “necessary evil” of Thomas Paine’s *Common Sense*, be expected to actively increase the sphere of liberty, since it operates in the realm of power. Instead, republican ideology suggested two major courses: set up government

so as to avoid any major concentration of unchecked power, and allow it only to engage in activities that will increase the likelihood of producing a virtuous citizenry.

The effects of this ideology on American political ideas has been well considered by the tradition exemplified by the works of Bailyn, Wood and Pocock. Those who fought the Revolutionary War, debated the Constitution, and installed the first United States government were concerned far less with Liberal freedom than with republican virtue, and no one then envisioned or desired that the fledgling nation would come to view itself as a “democracy” in the not-too-distant future. Thus the founding era and early national period are significant not for being the time in which democratic ideas took hold, but instead for establishing the intellectual background against which they would soon do so. A similar point holds with regard to capitalism. Republican virtues like self-reliance and the scorn of luxury play out nowhere as significantly as in economic relations. Yet republicanism was far from clear on what the appropriate governmental role should be in this regard: while an activist government might entail exactly the kind of usurpation of power against which republicanism warned, a lack of safeguards against the selfishness, indolence and greed that economic life can stimulate is an abrogation of its core responsibility. Though republican thinkers were quite clear on their opposition to what we would today call *laissez faire*, their generally unsatisfying alternatives to it revealed the strains that circumstances were placing on this philosophy.

## **REPUBLICAN ECONOMICS**

In his article “Fashion,” originally published in the *National Gazette* in 1792, James Madison noted that the buckle manufacturers of Birmingham had thrown themselves upon the mercy of the Prince of Wales for relief. They had recently been put out of work as a result of the fact that shoestrings and slippers have come into vogue, and demand for their products had lessened. This development left the future president



incensed. Observing that occupations that are dependent upon fashion to sell their products are “the most precarious of all,” Madison asserted that a system that distributes the ability to gain one’s livelihood on the basis of the arbitrary desires of others offers only “the most servile dependence of one class of citizens on another class.”

*Twenty thousand* persons are to get or go without their bread, as a wanton youth...may fancy to wear his shoes with or without straps, or to fasten his straps with strings or with buckles. Can any despotism be more cruel than a situation, in which the existence of thousands depends on one will, and that will on the most slight and fickle of all moves, a mere whim of the imagination[?] <sup>118</sup>

Madison’s concern about the vagaries of fashion prefigure what would become a persistent criticism of capitalism: that treating human beings as a “labor market” leads to great suffering when that market undergoes a correction. Certainly republicanism was, in some sense, anti-capitalist. Yet it is important to be precise as to what aspect of capitalism failed to meet with republican favor. It was not, for example, capitalism’s potential to generate inequality or poverty that violated the tenets of early national republicanism. Instead, it was the condition of *dependence* that concerned the first generation of American politicians: the mutual dependence foisted by capitalism upon employers, customers, suppliers, customers and owners seemed unlikely to promote the ability to ignore one’s self-interest and virtuously pursue only the common good.

For early national republicans, independence was generally assumed to be related to agriculture: the person who produces his own food would be in good shape no matter what happens to the rest of the economy. “Cultivators of the earth,” wrote Jefferson, “are the most valuable citizens. They are the most vigorous, the most independent, the most virtuous, & they are tied to their country & wedded to it’s [sic] liberty & interests by the most lasting bonds.”<sup>119</sup> Thus the republican denunciation of capitalist tendencies (capitalism itself did not yet exist) was not a blanket one: its aspects that might support

agrarianism—such as its tendency to provide far-flung markets for surplus crops—were most welcome. At the same time, different manifestations of the system’s increasing prominence—for example, its propensity to promote and reward financial speculation—could be decried in no uncertain terms. Madison’s solution to the problem of the workers at the buckle factory provides a perfect example of this republican outlook. Rather than arguing that manufacturing should be taken over by the government or invoking some sort of redistributive scheme, Madison suggests instead that the roots of the problem are in the fact that the workers are engaged in manufacturing at all. As long as one is engaged in manufacturing goods whose demand will fluctuate with the dictates of fashion, there is no hope of economic independence.

What a contrast is here to the independent situation and manly sentiments of American citizens, who live on their own soil, or whose labour is necessary to its cultivation, or who were occupied in supplying wants, which being founded in solid utility, in comfortable accommodation, or in settled habits, produce a reciprocity of dependence, at once ensuring subsistence, and inspiring a dignified sense of social rights.<sup>120</sup>

Thus those engaged in the production of “necessary” goods (i.e., food) are ensured a degree of autonomy denied to their brethren engaged in the activities of commerce and manufacturing. Not only does agriculture afford one the ability to consume the product of one’s labor directly, but there will always be demand, in Madison’s view, for the “surplus” that results from one’s labor.

Thus at the heart of the republican economic program was the same concern that motivated the movement’s political agenda: the support and protection of the virtue of the average citizen. While in the political realm the main threat to this moral uprightness comes from the temptations of power, republicanism saw the source of economic danger as financial dependence, which could tempt citizens to yield to the will of others rather than to virtuously consider the needs of the nation itself. Jefferson makes this point quite

clear in the most famous passage of *Notes on the State of Virginia*, in which he, like Madison in his “Fashion” piece, offers a contrast between Europe and the United States.

In Europe the lands are either cultivated, or locked up against the cultivator. Manufacture must therefore be resorted to of necessity not of choice, to support the surplus of their people. But we have an immensity of land courting the industry of the husbandman. Is it best then that all our citizens should be employed in its improvement, or that one half should be called off from that to exercise manufactures and handicraft arts for the other? Those who labour in the earth are the chosen people of God, if ever he had a chosen people, whose breasts he had made his peculiar deposit for substantial and genuine virtue...Corruption of morals in the mass of cultivators in a phænomenon of which no age nor nation has furnished an example. It is the mark set on those, who not looking up to heaven, to their own soil and industry, as does the husbandman, for their subsistence, depend for it on the casualties and caprice of customers. Dependence [sic] begets subservience and venality, suffocates the germ of virtue, and prepares fit tools for the designs of ambition.<sup>121</sup>

Thus republican political economy is based upon two main premises, the first of which is that the continued independence of the American citizenry could be guaranteed only through its engagement in agriculture. The second is that this independence is the only guarantor against the corruption of virtue that characterized, in the republican view, the more “advanced” industrial societies. Consequently, the United States, being blessed with ample and fertile land, should never have any reason to engage itself in any other sort of economic activity. Manufacturing and industry, in particular, should be kept in Europe, as American could trade their surplus agricultural produce for the rarely-needed manufactured articles.

The republican attitude toward capitalism specifically, then, was a bit complicated. While republicanism would certainly reject the idea that the market distribution of goods is the most beneficial, it also generally opposed the consolidation of government power as a dangerous threat to the sovereignty of a virtuous people. Furthermore, the increasing prominence of financial speculation and greater division of

labor that characterized late eighteenth and early nineteenth century American life could be nothing other than a threat to the prominence of the pastoral idea.

One sees this ambivalence most clearly in a quote from John Taylor of Caroline, the Virginia farmer, politician and philosopher. Historian Duncan MacLeod has noted that Taylor is “usually, and rightly, described as an agrarian,”<sup>122</sup> and political scientist C. William Hill, Jr. characterizes Taylor’s view as one that “that the interest of agriculture was the interest of the entire country.”<sup>123</sup> Yet even this most agrarian of republicans refrained from condemning capitalism outright.

I freely admit that capitalists, whether agricultural, commercial or manufactural, constitute useful and productive classes in society; and by no means design, in the use of the term, to insinuate that it contains an odious allusion. It may even be applied to the man whose bodily labour is his sole capital. But I also contend, that capital is only useful and re-productive, when it is obtained by fair and honest industry; and that whenever it is created by legal coercions, the productiveness of the common stock of capital is diminished, just as it is diminished by the excessive expenses of a civil government. Every species of capital just accumulated, by whatever name it is called, belongs to the same genus, diminishes the efficacy of the common stock of capital, enriches individuals, impoverishes a nation, and all operating in the same mode deserve to be equally odious.<sup>124</sup>

Yet the emphasis on farming as the only source of virtue and independence is too limiting to fully explain the attitude of early national republicans toward capitalism itself. The heavy reliance on slavery of the “independent” and “virtuous” Virginia republicans (and Jefferson’s well-known taste for European finery) would render the agrarian ideal, were it the entire story, little more than a hypocritical caricature. But these positions are merely the tip of the iceberg—specific recommendations that were underwritten by a series of important assumptions that defined late eighteenth and early nineteenth century political economy. Historian Drew McCoy has articulated and explained these more fundamental ideas in his 1982 book *The Elusive Republic: Political Economy in*

*Jeffersonian America.* The work asserts that republicanism was not merely a political ideology, but also an economic one; the concern for virtue that animated republicanism carried implications for nation's business as well as its politics.

Simply put, they ["the Revolutionaries"] assumed that a healthy Republican government demanded an economic and social order that would encourage the shaping of a virtuous citizenry. In that sense, once the Revolutionaries succeeded in establishing independence from the British Empire, they had to do much more than merely define and put into practice the proper constitutional principles of republican government. They had to define, and then attempt to secure, a form of economy and society that would be capable of sustaining the virtuous character of a republican citizenry. They had to establish, in short, a republican system of political economy for America.<sup>125</sup>

This system was based upon a set of assumptions about the nature of society itself. Human social arrangements, it was widely believed, were subject to a progression of growth and decay that was as inexorable as any physical law. These "several phases of organization" proceed inevitably "from 'rude' simplicity to 'civilized' complexity." In order of ascending sophistication, the stages of development consisted of "hunting, pasturage, agriculture, and commerce."<sup>126\*</sup> The overall goal of this republican theory of political economy, argues McCoy, was to significantly slow this process—for no one believed it could be halted or reversed—so that American society could remain, for a very long time, arrested somewhere between the agriculture and commerce phases.

The 'republican revolution' in political economy was based on the assumption that America would remain at a 'middle stage' of social development. This synthetic vision represented an effort to adapt the moral and social imperatives of classical republicanism to modern commercial society. According to this hybrid republican vision, American society was to grow prosperous and civilized without succumbing to luxury. As a people, Americans were to be active, diligent, and industrious, but not avaricious.<sup>127</sup>

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\* Though dating from a later period, it is difficult not to think of Thomas Cole's series of paintings, "The Course of Empire," as a particularly vivid example of this perspective.

Thus as the new government began operation in the 1790s, the consuming debate over political economy was not cast in terms of whether the United States would embrace capitalism or retain its barter-oriented, “subsistence-plus” character. Instead, partisans viewed the major issue of the day as that of whether or not the nation should embrace manufacturing, or do everything in its power to remain a primarily agricultural society.

In the Washington administration, Jefferson’s was the loudest voice for this classically republican outlook. While Hamilton chafed at the fact that the country’s lack of a manufacturing sector rendered it entirely dependent on other countries for some economic and military necessities, Jefferson was just as adamant that manufacturing would speed the decline of the personal independence upon which the citizenry’s virtue depended. Yet the philosophical elegance of the Jeffersonian vision was complicated by the empirical reality that the vestiges of commerce had already taken hold in the United States. McCoy noted “an uneasy suspicion (and sometimes recognition) among the Revolutionaries that even predominantly agricultural America was already a relatively advanced commercial society, that Americans were already to a great extent an ambitious commercial people with refined tastes and manners, and that under such conditions inflated expectations of classical public virtue might be unrealistic.” In seeking to “permit liberty, commerce, and prosperity and, at the same time, to deny their potentially corrupting effects,”<sup>128</sup> American republicanism was characterized by an essentially impossible tension.

Jeffersonians, however, believed that they could massage this seemingly daunting theoretical contradiction by manipulating the conditions under which it would play out. In particular, they advocated American territorial expansion, which would provide land for farmers to work, and international trade. In a letter to Madison written before the Constitution had been ratified, he wrote, “our governments will remain virtuous for many

centuries; as long as they are chiefly agricultural; and this will be as long as there shall be vacant lands in any part of America. When they get piled upon one another in large cities, as in Europe, they will become corrupt as in Europe.”<sup>129</sup> Thus as the population of the United States would grow, the nation must acquire new lands so that these people could farm. Trading agricultural surpluses to Europe for manufactured goods would enable Americans to have these products without having to locate any dreaded industry on this side of the Atlantic. Moreover, this pattern of commerce provided an solution to a fairly serious republican dilemma: if self-sufficiency and industriousness are equally virtuous, while avarice and covetousness undermine republican institutions, then it was not clear what a yeoman agrarian was supposed to do with his/her time once basic subsistence needs had been met. Raising extra crops for the purpose of selling them would be dangerously commercial, while failing to do so was just plain lazy.

The Revolutionaries almost unthinkingly absorbed into their republican outlook this logic of the importance of foreign markets and free trade to American agriculture. In so doing they embarked on a grand quest to achieve their vision of the good society—a society that would somehow reconcile their commitment to the cultivation of an active, industrious, enterprising, virtuous people with their commitment to the maintenance of a predominantly simple and agricultural social order. Their hope of success in this venture was pinned to the two forms of expansion, landed and commercial, that might enable them to defy the seemingly inexorable logic of social progress through time and remain at a middle stage of development, somewhere between the undesirable extremes of a rude and barbarous simplicity, on the one hand, and an overrefined and corrupt decadence, on the other.<sup>130</sup>

The republican plan of pursuing a policy of international trade and territorial annexation in order to maintain a virtuous and agricultural order put a great deal of strain on republican doctrines. Since commerce and industry were ideologically linked with social decline, then any policy that might suggest support for market-oriented enterprise automatically threatened the very stability of the still-fragile young republic. Yet the

strong contradictions in republican political economy made such a proposal almost inevitable. The desire for autonomous agrarianism was on a collision course with the conditions that would have to hold in order to obtain it; the two met in the person of Alexander Hamilton and his *Report on Manufactures*.

### THE DEVELOPING TENSIONS

In the early United States, Hamilton was arguably the most influential political figure and unquestionably the most controversial. Washington's Cabinet had only four positions, thus each member had a great deal of responsibility. Moreover, the position of Treasury Secretary had an outsize responsibility in the eighteenth century, one that is somewhat foreign to the contemporary understanding of the position. Hamilton's activist policies did little to quell the fears of a nation whose primary concern was the usurpation of power by a newly-established Federal government. Fearing the English example of Sir Robert Walpole (1676-1745), who had parlayed his position as Chancellor of the Exchequer into the creation for himself of the office of Prime Minister, Hamilton's political opponents resented and feared Hamilton's growing influence, referring to him derogatorily as an "American Walpole."<sup>131</sup>

Nor were these fears ill-founded. "In many respects," writes Drew McCoy, "Hamilton was an anomaly; perhaps more than any of his countrymen, he had succeeded in discarding the traditional republican heritage that heavily influenced the Revolutionary mind."<sup>132</sup> He was heavily influenced by the thought of philosopher David Hume, who stood largely outside the republican canon. Hume's philosophical arguments that human beings are better engaged by their passions or self-interest than their reason or virtue, as well as the more practical point that "[t]he more labour...is employed beyond mere necessities, the more powerful is any state,"<sup>133</sup> ran afoul of republican orthodoxy but would become central to Hamilton's own thinking and practice. Moreover, Hamilton's



financial and economic plans allotted great powers to the Federal government, and to Treasury itself. Given the prevalence of the republican conception of virtue, which posited a Manichean dichotomy between the interests of the body politic and those of the individual, many of his opponents elided their opposition to Hamilton's ideas and politics with personal accusations. Generally unfounded, they usually took the form of suggesting that the Secretary of the Treasury was seeking to enrich or empower himself or his friends. For example, a 1792 letter from Secretary Jefferson to President Washington alleges that Hamilton's economic program empowered his department and enriched his political allies.

That I have utterly, in my private conversations, disapproved of the system of the Secretary of the treasury, I acknowledge [sic] & avow: and this was not merely a speculative difference. His system flowed from principles adverse to liberty, & was calculated to undermine and demolish the republic, by creating an influence of his department over the members of the legislature. I saw this influence actually produced, & it's [sic] first fruits to be the establishment of the great outlines of this project by the votes of the very persons who, having swallowed his bait were laying themselves out to profit by his plans: & that had these persons withdrawn, as those interested in a question ever should, the vote of the disinterested majority was clearly the reverse of what they made it. These were no longer the votes then of the representatives of the people, but of deserters from the rights & interests of the people: & it was impossible to consider their decisions, which had nothing in view but to enrich themselves, as the measures of the fair majority, which ought always to be respected.<sup>134</sup>

While personal and political rivalries played a significant role in the unfolding of American political economy in the last decade of the eighteenth century, they are not as significant to the long-term construction of the nation's system of democratic capitalism as the content of Hamilton's vision and the opposition response to it. The next section will examine his plan more closely.

## HAMILTON'S FINANCIAL "SYSTEM"

What was often called Hamilton's financial "system" was primarily explicated in three reports that he submitted to Congress: the *Report on the Public Credit* and the *Report on a National Bank* in 1790, and the *Report on the Subject of Manufactures* the next year. The first two reports dealt with pressing national problems and were consequently approved by Congress despite the misgivings of many of its members, while the third,\* which described Hamilton's most comprehensive vision for a national economy, would create great controversy.

The *Report on the Public Credit* tackled the serious issue of government debt: states still owed a great deal of money from the Revolutionary War, and the previous national government—which had labored under what Hamilton called the “embarrassments of a defective constitution”<sup>135</sup>—ran in the red as a matter of course. He began this report by arguing that the United States should issue government securities in order to raise money to pay off its outstanding debt. This arrangement would entail a long-term commitment to the holders of these bonds, and would require the nation to pay its financial obligations in specific amounts at specific intervals. Against the conventional wisdom, Hamilton argued that “funding” the debt, as such a commitment was known, would constitute a positive good for a society in the position of the United States. Establishing a regular schedule of payments increases public trust in the government, stabilizes the price of shares in the debt certificates, and consequently decreases the tendency toward speculation in these government securities. Besides the obvious “advantage to the public creditors” that such a policy would entail, benefits ensue even to citizens who do not hold any certificates of debt. Most important is that “in

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\* There was also a less significant *Report on the Mint* in early 1791, which inspired some legislation, as well as a few follow-up reports to the *Report on the Public Credit*.

countries in which the national debt is properly funded...it answers most of the purposes of money.”<sup>136</sup> In other words, shares in the national debt, once their trading value (which might approach but would never exceed their issued value) is appropriately stabilized, can function as both a store of value and a medium of exchange. Such an arrangement would benefit merchants, whose cyclically unused funds can earn interest if invested in the national debt; farmers and manufacturers, who will find it easier to raise capital when more currency is in circulation; and “the public and individuals” who can “borrow on cheaper terms.”<sup>137</sup>

The first few pages of the Report on the Public Credit establish Hamilton’s great support of the funded debt. This opinion, however, was not widely shared; those who opposed Hamilton’s plan believed that the government should be almost exclusively devoted to the purpose of paying off the debt as quickly as possible. In their eyes, Hamilton’s refusal to reduce government functions to a negligible level in order to do this expressed an unfathomable preference for seeing the country in debt. James Madison, for example, wrote in a private letter at this time, “I go on the principle that a public debt is a public curse.”<sup>138</sup> Nonetheless, the source of the controversy that attached to the Report on Public Credit was less the funded debt itself—for which Hamilton argued so eloquently and forcefully that many reluctantly granted its efficacy—than two attendant recommendations. The proposals that garnered the most objections were one that the United States pay current holders, rather than the original recipients, of government certificates of debt, and another that the Federal government take responsibility for state government Revolutionary War debts.

Much of the outstanding domestic debt dated to the Revolutionary War, when the cash-strapped Second Continental Congress issued notes payable at a later date. Many of those who had been granted such securities, in turn, had been soldiers in George

Washington's army. A great number of these veterans had fallen upon hard times financially; this fact, combined with the precarious state of the nation's accounts, prompted many to sell their certificates for a fraction of their value. When Hamilton proposed to make good on the nation's debts, the value of these certificates began to rise. Should his plan be passed into law, those who had bought such securities from their original holders would be in for a significant windfall, while the sellers, of course, received nothing beyond the payment already received from the private buyer. While this struck many as unfair, Hamilton saw no possible choice other than honoring the original terms under which the securities were issued. Not only would tracking down the earliest holders be a logistical nightmare, but there was no way to know who had sold his/her shares out of necessity, and who had merely lacked faith in the longevity of the United States. Hamilton's primary concern, however, was with the negative effect that "discrimination" between original and subsequent holders would wreak upon the credit of the United States. In rewriting the terms of its notes after they are issued, the nation would be sending the message to potential creditors that its word in financial matters was unreliable.

The impolicy of a discrimination results from two considerations; one, that it proceeds upon a principle destructive of that *quality* of the public debt, or the stock of the nation, which is essential to its capacity for answering the purposes of money—that is the *security of transfer*; the other...as because it includes a breach of faith, it renders property in the funds less valuable; consequently induces lenders to demand a higher premium for what they lend, and produces every other inconvenience of a bad state of public credit.<sup>139</sup>

Evidently not persuaded by this argument, Madison was adamantly opposed to this particular recommendation, and, much to Hamilton's surprise, proposed in the House a scheme for discrimination. Madison's fellow representatives rejected his bill 36 to 13, but the dispute over discrimination represented the beginning of a break between the two

statesmen, whose collaboration on *The Federalist Papers* was quickly receding into the past.

The second major controversy prompted by the *Report on the Public Credit* concerned Hamilton's recommendation that the Federal government take on all the debts that states had accumulated during the Revolutionary War. He argued that leaving the responsibility for those debts to the several states would lead to "interfering regulations, and thence collision and confusion,"<sup>140</sup> as each one separately levied taxes to pay them off. Moreover, Hamilton wanted to use the debt to consolidate support for the still new and somewhat precarious union of the states. "If all the public creditors receive their dues from one source, distributed with an equal hand, their interest will be the same. And having the same interests, they will unite in the support of the fiscal arrangements of the government."<sup>141</sup>

This provision for "assumption" met, if anything, with greater resistance than that regarding discrimination; Thomas Jefferson would later write that the "measure produced the most bitter & angry contests ever known in Congress, before or since the union of the states." Having recently returned from France, Jefferson himself was somewhat of a player in these debates, having quickly made common cause with Madison against Hamilton's plan to consolidate the national debt. Jefferson, Madison and their fellow administration opponents were concerned that those states that had exercised great caution in running up their debts, as well as those who had taken some care in paying them back, would essentially be punished when the Federal government assumed all state debts indiscriminately. In describing the controversy around this issue, Jefferson later cited an example of such extravagance: an "absurd attempt, absurdly conducted" by Massachusetts to attack the "British post of Penobscot"<sup>142</sup> during the Revolutionary War. Madison expressed concern on the floor of the House that assumption would compel the

more fiscally responsible states “after having done their duty, to contribute to those states who have not equally done their duty.”<sup>143</sup> Madison’s Congressional leadership and Jefferson’s backroom dealing dealt the assumption plan a crushing blow when it was narrowly defeated in the House in April of 1790. Hamilton, convinced that assumption was necessary to the very survival of the union, did not let the plan die there. In June, he dined with Madison and Jefferson at the latter’s home. There, according to lore, the plan was saved with some political horse-trading: Hamilton agreed to secure enough Congressional votes to place the national capital at a site on the Potomac (rather than his own adopted hometown of New York) in exchange for the passage of the assumption bill.<sup>144</sup> Both proposals—for the location of the capital and assumption of state debts—met final approval in the House in July, having been previously passed in the Senate.

Though much of the controversy surrounding the *Report on the Public Credit* turned on regional rivalries, the concerns it generated did touch on deeper issues. Hamilton’s unwillingness to support discrimination struck many as favoring the concerns of speculators over those of military veterans, his commitment of the nation to a costly funding scheme suggested that an invasive government taxing mechanism would soon be encroaching into the realm of republican liberty, and the assumption plan stoked fears that the Federal government would soon envelop the states. The concerns of Madison, Jefferson and the opponents of the administration would soon harden, by the time of the *Report on Manufactures*, into full-fledged ideological resistance. In the interim, however, Hamilton would fuel opposition suspicions further by proposing that the United States charter a national bank.

Hamilton’s concern over the nation’s unstable financial infrastructure predates his tenure as Treasury Secretary and even the Constitution itself. As aide-de-camp to General Washington during the Revolutionary War, Hamilton was continually frustrated

with the inability of the Continental Congress to support the value of its own currency, procure adequate supplies for the army and impose order on the competing impulses of the various states. Thus it was that some eleven years before officially proposing a national bank, Hamilton had been hatching plans for such an institution. In a letter to New York Congressman James Duane, the twenty-five year old Hamilton articulated a vision of the bank that would prove to be remarkably similar to the one that was adopted much later. Equally important, however, was the underlying philosophy that supported his intricate financial structure.

The only certain manner to obtain a permanent paper credit is to engage the monied interest immediately in it by making them contribute the whole or part of the stock and giving them the whole or part of the profits...And why can we not have an American bank? Are our monied men less enlightened to their own interest or less enterprising in the pursuit? [sic] I believe the fault is in our government which does not exert itself to engage them in such a scheme...have they not sufficient confidence in the government and in the issue of the cause? Let the Government endeavour to inspire that confidence, by adopting the measures I have recommended or others equivalent to them.<sup>145</sup>

This same philosophy would still animate Hamilton's thinking years later, as evidenced in the *Report on the Public Credit* and the *Report on a National Bank*. Hamilton believed that the financial health of the nascent United States—indeed, its prospects for long-term stability more broadly—depended to a very large degree on the extent to which the wealthy were willing to invest in it. In a cash-poor country, their capital was utterly necessary if the national economy was to grow and diversify; in a nation suffering from shaky credit, their purchase of government securities implied confidence. But such people would not part with their assets unless the government could provide conditions under which the value of these instruments could grow. Thus Hamiltonian political economy begins with the government providing conditions under

which the elite classes can safely invest their money, with the ultimate goal of harnessing these investments to amplify and fuel the financial stability of the government itself.

Thus in constructing an interlocking system that sought to strengthen and unite the country by enlisting the economic motivations of his fellow citizens, Hamilton clearly betrayed a greater trust in self-interest than republican virtue as a motivating factor. His careful integration of incentives was designed to provide economic actors with personal motivations to support governmental initiatives in order to harness their individual energy for collective political ends. The system therefore demonstrates one way to combine the insights of the republican revolution in government with a Liberal respect for individual economic rights; it represents, in short, a conception of democratic capitalism.

Yet nearly everything about Hamilton's philosophy violated the spirit of early national republicanism; it quite simply could not carry the day, no matter how many of its policies the U.S. was to adopt. To administration opponents, providing conditions under which the wealthy would invest in the federal government looked suspiciously like using the power of the government to benefit this elite class, a policy which could not be further from the republican opposition to hierarchy. Jefferson, for example, expressed to fellow Virginian George Mason his concerns shortly after Hamilton issued the *Report on a National Bank*. "The only corrective of what is corrupt in our present form of government will be the augmentation of the numbers in the lower house so as to get a more agricultural representation, which may put that interest above that of the stock-jobbers."<sup>146</sup> Moreover, the motives that Hamilton attributed to himself—the diversification and growth of the national economy—were, in the eyes of republicans, not things that anyone should want. Diversified economies move people away from agriculture, and growing ones are speeding along the road to inevitable decay. In republican eyes, Hamilton was at best misguided, at worst dangerously corrupt.



The specific concerns about a national bank were twofold. First, administration opponents feared that its potentially lucrative financial mechanisms, which decouple monetary rewards from both land and labor, promote self-interest rather than republican independence, and undermine a concern with the public good. Their second objection was that a national bank was a perfect example of the kind of “corruption” that their republican experiment was designed to avoid: it used the power of the state to reward the elite—urban, wealthy and commercially-minded—to the detriment of the nation’s virtuous agrarian class. (The very nature of agriculture, at least in this period, is such that borrowing large sums once a year is a necessary part of the occupation; farmers therefore had little sympathy for the problems of creditors.)

Hamilton, for his part, made it all too easy for opponents of the administration to see his complicated interlocking financial schemes as conspiratorial and dangerous. The institutions that he was building were each dependent upon each other, so that every time one more was added to the mix, it further strengthened the ones already in place. Hamilton’s bank report, for example, required that one could buy into the bank only with a combination of funds of which three-quarters must be in the form of shares in the public debt. Based on the idea that the shares would come to be regarded in function as currency, this practice aided the bank by providing capital that would be far more liquid than precious metals or land. But it also served the purposes of the funded debt, as the requirement would necessitate an increase in the demand for its shares. Moreover, the fact that government interest payments on the shares of the debt would accrue to the bank served to further intertwine those two institutions.

The *Report on a National Bank* was submitted to Congress in December of 1790, nearly a year after the *Report on the Public Credit*. The debate over the bank would prove to be the single most partisan event in the Federalist period, essentially creating the

first American political parties. Surprisingly, however, the proposal for a central bank, chartered by the United States, would eventually meet with less resistance legislatively than the recommendations of the earlier report. The nation had little in the way of financial infrastructure and quite simply needed, in the words of Hamilton biographer Ron Chernow, “an institution that could expand the money supply, extend credit to government and business, collect revenues, make debt payments, handle foreign exchange, and provide a depository for government funds.”<sup>147</sup>

Hamilton begins his *Report on a National Bank* by energetically attempting to convince his republican readers of the benefits of having a bank at all, concentrating primarily on the now-commonplace financial axiom that banks can actually multiply the amount of money that is available in a given economy. To make the point perfectly clear, in addition to Hamilton’s usual penchant for facts and figures, he also articulates a more homespun argument.

It is evident, for instance, that the money, which a merchant keeps in his chest, waiting for a favourable opportunity to employ it, produces nothing ‘till that opportunity arrives. But if instead of locking it up in this manner, he either deposits it in a Bank, or invests it in the stock of a Bank, it yields a profit, during the interval...His money thus deposited or invested, is a fund, upon which himself and others can borrow to a much larger amount. It is a well established fact, that Banks in good credit can circulate a far greater sum than the actual quantum of their capital in Gold & Silver.<sup>148</sup>

After his argument for the bank’s ability to increase capital flows, Hamilton contents himself with the claim that further benefits of the bank can “readily be inferred as consequences from those, which have been enumerated.”<sup>149</sup> Claiming a desire not to try the patience of his House readership, Hamilton quickly turns to a much lengthier consideration of the bank’s ample “disadvantages, real or supposed.” The bank’s negatives are ones with which a republican audience would find particular fault, among them a tendency toward usury, a monopolization of the nation’s capital, and a temptation

for the abuse of credit as a component of fraudulent schemes.<sup>150</sup> Yet they are also ones that hold up very poorly to Hamilton's arguments: the bank itself gains little from charging usurious rates, the legislative branch has the right to determine the bank's capitalization, and possible abuses of credit should not be considered in isolation, but balanced against the good that a central bank can do.

If the abuses of a beneficial thing are to determine its condemnation, there is scarcely a source of public prosperity, which will not speedily be closed. In every case, the evil is to be compared with the good; and in the present case such a comparison will issue in this, that the new and increased energies derived to commercial enterprise, from the aid of banks, are a source of general profit and advantage; which greatly outweigh the partial ills of the overtrading of a few individuals, at particular times, or of numbers in particular conjunctures.<sup>151</sup>

The last point is the most telling in representing the difference between Hamilton and his opponents. The subsequent debate over the bank was not over technical details like the appropriate interest rate or the "compound ratio" of circulating notes to gold stock, but the wisdom and desirability of banks at all. Hamilton saw these institutions as boons to society with a few potentially pernicious effects, while those who opposed the administration viewed them as corrupting influences that might, unfortunately, turn out to be necessary. The concern over these objections, in short, says less about the problems with banks than the tremendous republican fear that they generated in the early national United States.

Thus it was that Madison and Jefferson would concentrate all of their objections, not on the character or desirability of a central bank, but on the question of whether or not establishing one is something the government is allowed to do at all. Both men saw in the establishment of a national bank nothing short of a constitutional crisis, a violent abuse of the so-called "elastic clause" that grants Congress the "power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

Yet this difference over the meaning of the Constitution was more than academic or legal hair-splitting; the success of Hamilton's proposal would signify the creeping encroachment of the government into the sphere of liberty, using its power to abet avaricious speculators at the expense of the independent farmer. On the floor of the House, Madison objected to the bank because its authorization would imply an excessively lenient read of the Constitution. The words "necessary and proper," in his view, are so restrictive that they are essentially unnecessary; the elastic clause is "merely declaratory of what would have resulted by unavoidable implication."<sup>152</sup> This strict view of Constitutional interpretation, argued Madison, could not be more at odds with the broad allocation of power that characterized the bank bill, whose language would authorize anything that "might be conceived to be conducive to the successful conducting of the finances; or might be *conceived to tend to give facility* to the obtaining of loans."<sup>153</sup>

Madison's exhortations were for naught; the House passed the bank bill by a wide margin, as the Senate had already done. The final hope for the opponents was that the president would veto the bill. Thus it was that not quite two weeks after Madison's speech in Congress, Jefferson submitted to Washington, at the president's request, his "Opinion on the Constitutionality of a National Bank." Like Madison, the Secretary of State saw a dangerous threat to the Constitution in the precedent set by the establishment of a national bank. In a strained reading of the wording that begins Section 8 of Article I, Jefferson argued that the power of Congress to tax is limited to situations in which the raised revenue will "pay the debts or provide for the welfare of the Union." Thus Congress is not authorized "*to do anything they please* to provide for the general welfare, but only to *lay taxes* for that purpose." To interpret the document otherwise is to "reduce the whole instrument to a single phrase, that of instituting a Congress with power to do

whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.”<sup>154</sup>

While Madison’s speech on the House floor had questioned the interpretation of the words “necessary and proper,” Jefferson focused on the issue from, as it were, the other end. Assuming the cogency of Madison’s arguments, Jefferson asserted that the existence of a bank could not be construed as “necessary” to the performance of Constitutionally sanctioned functions. No enumerated Constitutional power exists, he argued, whose execution is impossible without the existence of a bank. The sought-after bank is not therefore necessary, but only “convenient;” as such, the price to pay for it is too high.

Can it be thought that the Constitution intended that for a shade or two of *convenience*, more or less, Congress should be authorized to break down the most ancient and fundamental laws of the several States[?]. . . Nothing but a necessity invincible by any other means, can justify such a prostitution of laws, which constitute the pillars of our whole system of jurisprudence.<sup>155</sup>

Thus for Jefferson, as for Madison, the establishment of a national bank signaled not just a policy or direction against which they were opposed, but a full-fledged national threat. Continuing in a pattern that would come to define the landscape of opposition politics, Hamilton and his system came to represent not an alternative view of the public good, but a subversion of it.

It is against this backdrop that the Treasury Secretary submitted his “Opinion on the Constitutionality of a National Bank” to President Washington. Before making his decision as to whether to sign the bank bill, the chief executive gave Hamilton the opportunity to respond to the reports filed by Jefferson and Attorney General Edmund Randolph (who also believed the bank to be unconstitutional). Hamilton’s original report on the bank had not even considered the argument that the Federal government lacked the

Constitutional authority to establish such an institution. In considering that possibility in his response to these criticisms, Hamilton submitted what is widely considered to be among the most articulate and influential defenses of the so-called “loose” school of Constitutional interpretation.

Yet more important for our purposes is that the “Opinion on the Constitutionality of a National Bank” makes clear the fact that Hamilton was more concerned with the business of governing than with advocating a specific theory of the true meaning of the Constitution. “In all questions of this nature,” writes Hamilton near the end of his submitted opinion, “the practice of mankind ought to have great weight against the theories of Individuals.”<sup>156</sup> And it is evident that Hamilton’s experience as the most active and influential member of the executive branch had taught him that the objections of Jefferson and Randolph (and, by extension, Madison), if allowed to carry the day, would cripple the new government. The interpretation of the Constitution advanced by the opponents of Hamilton’s plan would not only deny new powers to the Federal government, but also restrict it from carrying out duties whose previous assumption had raised no objections in the past.

For Hamilton, the fundamental concern raised by these objections was not legal theory, but sovereignty. If a nation is to be sovereign within its own territory, then denying its government a specific power in that space is tantamount to claiming that such power is by its very nature illegitimate—if the sovereign state cannot execute such a power, then obviously no one *else* can. Yet it is clear that the sorts of powers implied by the establishment of a bank are not denied to government more generally. And if these prerogatives are not forbidden by their nature to any government at all, and not specifically forbidden by the Constitution, then they consequently must be allowed. Thus in Hamilton’s view, to ask the question of whether or not a specific means is justified by

the Constitution is to betray a misunderstanding of the nature of government. “[E]very power vested in a Government is in its nature *sovereign*, and includes by *force* of that *term*, a right to employ all the *means* requisite, and fairly *applicable* to the attainment of the *ends* of such power; and which are not precluded by restrictions & exceptions specified in the constitution; or not immoral, or not contrary to the essential ends of political society.”<sup>157</sup>

The fulcrum upon which this argument balanced is, of course, the claim that sovereignty by its nature implicitly entails the assumption of certain powers, whether or not they have been specifically granted. Broadly speaking, Hamilton presented two arguments to this effect: one, empirical in nature, claims that the United States has been executing these sorts of authorities all along; while the other, more theoretical, advances the case that since the category of necessity describes the contingent and variable difficulty in accomplishing a given task, it cannot be a category of legal or moral analysis.

In the first sense, Hamilton argued that the Federal government had already used means not specifically enumerated in the Constitution in order to accomplish that document’s sanctioned ends. Using the example of a previously enacted law allowing for the construction of lighthouses and other navigation aids, Hamilton contested Madison’s claim (implicitly supported by Jefferson in his memo) that, under the prevailing understanding of the Constitution, a means was “necessary” only if without it the ends at hand are unattainable. If that were so, argued Hamilton, the lighthouses would not have been allowed to be built, because no one could plausibly believe that without lighthouses, the United States would be unable to regulate commerce.

Other common understandings, argued Hamilton, demonstrate that the United States does possess certain powers by the very nature of its sovereignty. If the nation

uncontroversially retains such authorities in lands that are not incorporated as states (such as the Western territories, and the yet-to-be-named Washington, DC), then it is difficult to argue that the Constitution forbids them to the Federal government outright. Furthermore, Jefferson's objection might seem reasonable enough when offered as a criticism, but it would beg an important question upon being admitted as an actual principle of government: how clearly do political ends need to be specified before they can fairly be considered Constitutional? "[A]ccurately speaking, no *particular power* is more than *implied* in a *general one*. Thus the power to lay a duty on a *gallon of rum*, is only a particular *implied* in the general power to lay and collect taxes, duties, imposts and excises."<sup>158\*</sup>

Yet Hamilton's most sweeping criticisms are, in fact, philosophical. In his view, whether or not one action is necessary to achieving another is entirely contingent upon the state of affairs in a given place and time. Jefferson, for example, had argued that many of the state banks could provide whatever function the national bank would serve. But what if, asked Hamilton, there were no state banks? Would it be "necessary" to establish a national bank in one case but not the other? If so, the Constitution would not be a document that delineates what powers the various government are justly given and denied, but merely one that mediates the difficulty of achieving particular tasks. Since Americans did not take such a view of their Constitution, Hamilton concluded that "necessity" is not, and cannot be, a viable Constitutional category. "The *degree* in which

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\* Though Hamilton makes little of this point, it is actually rather damning of the entire "strict constructionist" philosophy of Constitutional interpretation. The actual relationship between specific actions undertaken by the government and their descriptions listed in the Constitution can arguably never be specific enough to meet the standards of that school, if they were applied rigidly. Arguments questioning the meaning of membership in a category are not generally terribly useful to practical politicians, but philosophers of language might make more of Hamilton's objection than he himself did.



a measure is necessary, can never be a test of the *legal* right to adopt it. That must ever be a matter of opinion; and can only be a test of expediency.”<sup>159</sup>

Though Hamilton spends the latter half of his opinion arguing the specifics of the national bank and answering, point by point, the charges of Jefferson and Randolph, it is his overall philosophical, administrative and Constitutional vision that make the most lasting impression of the document. In his “Opinion on the Constitutionality of a National Bank,” Hamilton reveals himself to be less the naked ideologue or Machiavellian schemer of legend than someone who was far more comfortable with the give and take of republican political life than his two most prominent opponents.

The truth is that difficulties on this point are inherent in the nature of the federal constitution. They result inevitably from a division of the legislative power. The consequence of this division is, that there will be cases clearly within the power of the National Government; others clearly without its power; and a third class, which will leave room for controversy & difference of opinion, & concerning which a reasonable latitude of judgment must be allowed.<sup>160</sup>

In the 1790s, however, this realm of “reasonable latitude of judgment” contained serious disagreement about the most fundamental goals of the American experiment. Americans of the time drew their political battle lines right through the issue of political economy, and placing the United States on a secure financial footing was Hamilton’s most urgent goal. Having established a mutually supporting system of funded debt and national bank, Hamilton next turned to the relationship between the government and the *private* economy, where he would encounter his fiercest resistance.

### **THE REPORT ON MANUFACTURES AND ITS IMPLICATIONS**

Though always a practical politician rather than a grand theorist, Hamilton’s *Report on the Subject of Manufactures* stands alongside his work on the *Federalist* among the significant intellectual achievement of the founding period. Moreover, the

document and the response that attended it came as close as anything in the era to an overt debate about the merits of republicanism itself. Against the background of the republican insistence that agriculture represented a moral and political bulwark against the forces of luxury that threatened the American experiment and the growing sense that the Secretary of the Treasury was usurping the power of the government for his own nefarious ends, Hamilton presented a plan whose purpose was to increase the role of manufacturing in the economic life of the United States.

*The Report on Manufactures* arose in response to a request from Congress, which was concerned primarily about the military and strategic vulnerability that would arise from an inability to produce needed supplies and weapons. Hamilton spent nearly two years gathering information and writing his other reports, and finally complied with the request in December of 1791, not quite a year after the *Report on a National Bank* and almost two since the initial *Report on the Public Credit*. In this period, opposition to Hamilton had begun to harden: the success of his earlier reports had alarmed administration opponents, who were determined to prevent Hamilton's newest recommendations from establishing new practices and institutions. Indeed, only a few months later the Secretary himself would write in a personal letter that he had become "unequivocally convinced" of the fact that "Mr. Madison cooperating with Mr. Jefferson is at the head of a faction decidedly hostile to me and my administration."<sup>161</sup> Since the dominant opinion of the day viewed manufacturing and agriculture as polar opposites, the greater prominence of one necessarily eating into the influence of the other, prevailing republican sentiment was aligned against Hamilton before anyone had even read the report.

The two main points of the *Report on Manufactures*, which Hamilton prepared with the help of his assistant Tench Coxe (with whom he later had a great falling-out), are

that the United States is greatly in need of more industry, and that this need justifies government support. The only open question on these arguments was which one would more strongly offend republican sensibilities: industry threatened the primacy of agriculture, and economic support from the Federal government portended a serious consolidation of power. Either way, Hamilton was clearly aware that his goals in writing this report had set him up to swim against the tide of conventional wisdom. Noting with great understatement that “[t]here still are...respectable patrons of opinions, unfriendly to the encouragement of manufactures,”<sup>162</sup> Hamilton structured much of the writing around refuting these commonly held views.

Thus after first listing the major arguments against manufacturing, Hamilton uses the *Report on Manufactures* to dismiss them one by one. Though “the cultivation of the earth...has *intrinsically a strong claim to pre-eminence over every other kind of industry*,” we should not assume for that reason “that it has a title to any thing like an exclusive predilection” to the nation’s economic attention. Such a claim would require “more evidence, than has yet been given in support of the position.”<sup>163</sup> Hamilton had spent the better part of two years collecting empirical data, and clearly believed that the preference for agriculture to the exclusion of manufacturing is a function of a dangerous ideological fixation rather than a concern for the best interests of the United States. Yet he does not claim to have the data to determine that industry is more productive than farming; instead, Hamilton argues only that the claims he is trying to refute are lacking in the same empirical evidence. His point is that the debate over the role that manufacturing will play in the United States begins on an entirely mistaken premise.

The question must still be, whether the surplus, after defraying expences, of a *given capital*, employed in a *purchase and improvement* of a piece of land, is greater or less, than that of a like capital employed in the prosecution of a manufactory: or whether the *whole value produced* from a *given capital* and a *given quantity of labour*, employed in one way, be

greater or less, than the *whole value produced* from an *equal capital* and an *equal quantity of labour* employed in the other way: or rather, perhaps whether the business of Agriculture or that of Manufactures will yield the greatest product, according to a *compound ratio* of the quantity of the Capital and the quantity of labour, which are employed in the one or in the other.<sup>164</sup>

Hamilton's well-earned historical reputation for brilliance in this report, however, should not distract from the fact of his rhetorical disingenuousness. Certainly the French physiocrats, who argued that agriculture is the *only* economic activity that produced more value than it consumes, were one target of Hamilton's argument. But Continental theories were hardly the main obstacle to the implementation of the Hamiltonian system in the United States of the late eighteenth century. Though Jefferson, in particular, expressed some sympathy with physiocratic views, the central issue of the day was not whether or not manufacturing could be more productive than agriculture. Instead, it was a more philosophical one, about the nature of the society that they were trying to create. Administration opponents were arguing that manufacturing brought with it pernicious moral consequences, ones that would ultimately spell the decline of the republic itself. Thus phrasing the question as one of productivity not only pushed aside the most damaging emotional and philosophical force of the objections of Hamilton's opponents, but allowed the Secretary to conduct the battle on terrain in which he had an advantage: few, if any, people in the young nation knew as much about the state of the country's economy.

The *Report on Manufactures* makes clear that Hamilton wanted to reframe the manufacturing issue. He clearly had little patience with republican economic concerns, but to assume for that reason that he sought to overturn them in favor of a nakedly capitalistic program would be a mistake. Hamilton believed that economic growth was necessary to the nation's long-term survival, that such expansion would be impossible

without a healthy manufacturing sector and that the county's best hope for geopolitical independence would lie with the development of domestic markets for its agricultural produce and homegrown suppliers for its industrial needs. But the report also demonstrates that Hamilton's desire to use government power to advance market mechanisms or even privilege specific economic actors stems less from an impulse toward capitalism than from an ardent nationalism. Thus Hamilton attempted to skirt the debate over whether increased productivity is in itself a positive good in favor of an attempt to bury his opponents beneath a barrage of arguments in support of two major points: that diversifying the economy would increase economic output, and that a prominent manufacturing base would make for greater national independence.

Administration opponents were not well-disposed toward this reasoning, believing that both of Hamilton's concerns could be addressed with a program of European trade. Since the United States had no shortage of arable land while Europe was having difficulty feeding its populations, and republican ideology advocated an agricultural economy for the U.S. anyway, Hamilton's adversaries were generally content to follow the assessment of the situation that Jefferson had made over a decade before.

While we have land to labour then, let us never wish to see our citizens occupied at a workbench, or twirling a distaff. Carpenters, masons, smiths, are wanting in husbandry: but, for the general operations of manufacture, let our workshops remain in Europe. It is better to carry provisions and materials to workmen there, than bring them to the provisions and materials, and with them their manners and principles. The loss by the transportation of commodities across the Atlantic will be made up in happiness and permanence of government. The mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body. It is the manners, and spirit of a people which preserve a republic in vigour. A degeneracy in these is a canker which soon eats to the heart of its laws and constitution.<sup>165</sup>

The passage makes clear that it is difficult to separate Jefferson's skepticism about the economic prospects of industry in the United States from his distaste for manufacturing

itself. The *Report on Manufactures*, however, entirely ignored the perceived moral implications of the presence of manufacturing firms in the United States in favor of several strong arguments refuting the notion that an increased manufacturing presence in the country will harbor only negative economic results. Hamilton provides seven different reasons why opinions along the lines of Jefferson's are mistaken, varying from the practical (factory workers will have to buy produce from farmers in order to eat) to the idealistic (new industries will furnish "greater scope for the diversity of talents"). There is no reason to discuss here each of Hamilton's arguments in favor of the efficiency of manufacturing enterprises. With regard to this particular issue, the facts were simply on his side, and Hamilton efficiently dispatched any number of arguments and statistics to demonstrate his case. The type of logic employed in many of these reasons, however, is captured most effectively in the following thought experiment:

If instead of a farmer and artificer, there were a farmer only, he would be under the necessity of devoting a part of his labour to the fabrication of cloathing [sic] and other articles...and of course he would be able to devote less labour to the cultivation of his farm; and would draw from it a proportionably less product. The whole quantity of production, in this state of things, in provisions, raw materials and manufactures, would certainly not exceed in value the amount of what would be produced in provisions and raw materials only, if there were an artificer as well as a farmer.<sup>166</sup>

From the perspective of the entire country, the scenario involving one of these two laborers going into manufacturing creates the greatest amount of goods overall. The benefits of division of labor, in other words, will enable the same two workers to produce more total goods. If, in addition to maximizing what we would today call gross domestic product, the provisions created by the new industry are also ones needed in the county, then there can be only advantages in encouraging the economy to produce them.

Moreover, one implicit assumption of the opposition alternative, that the young, weak United States could procure favorable terms of trade with its more powerful and established European partners, had *not* been borne out by the American experience up to that time. In fact, the protectionist tariffs currently in place, argued Hamilton, have already limited the American ability to engage in international trade, placing the U.S. “to a certain extent in the situation of a country precluded from foreign Commerce.”<sup>167</sup> Thus the country can effectively buy, but not sell. U.S. producers would be unable to get good prices for their wares, and could not acquire the liquidity necessary to purchase foreign goods. Under such conditions Jefferson’s prescription to “let our workshops remain in Europe” is unworkable; the only viable options are to develop a domestic manufacturing sector or to simply do without manufactured goods.

In such a position of things, the United States cannot exchange with Europe on equal terms; and the want of reciprocity would render them the victim of a system, which should induce them to confine their views to Agriculture and refrain from Manufactures. A constant and encreasing [sic] necessity, on their part, for the commodities of Europe, and only a partial and occasional demand for their own, in return, could not but expose them to a state of impoverishment, compared with the opulence to which their political and natural advantages authorise [sic] them to aspire.<sup>168</sup>

Unsurprisingly, Hamilton believed that the nation should develop its own industrial base rather than commit its citizens to live with only rude, homemade products. “If Europe will not take from us the products of our soil, upon terms consistent with our interest, the natural remedy is to contract as fast as possible our wants of her.”<sup>169</sup> Yet the United States lacks some of the ingredients to take advantage of its potential in the manufacturing arena. Here one can see an example of the fact that Hamilton was simply not a capitalist, even if his nationalist tendencies supported the development of capitalism in the United States: Hamilton simply did not believe that the doings of the market

would be sufficient to entice Americans to begin working in the most productive and socially beneficial new enterprises. Following a point originally made by Hume (and implicitly contradicting Adam Smith), Hamilton argued that people are unduly influenced by their previously developed habits, and often follow market signals reluctantly or not at all. Thus if government does not intervene, the American manufacturing sector will never get off the ground.

[I]t is of importance that the confidence of cautious sagacious capitalists both citizens and foreigners, should be excited. And to inspire this description of persons with confidence, it is essential, that they should be made to see in any project, which is new, and for that reason alone...precarious, the prospect of such a degree of countenance and support from government, as may be capable of overcoming the obstacles, inseparable from first experiments.<sup>170</sup>

In order to stimulate its nascent industrial sector, the nation's government must step in to provide some of these necessities. Hamilton mentions three impediments to this program: the scarcity and expense of labor, and the lack of capital. In the long run, Hamilton argued that population growth and machinery, respectively, can solve the first two problems, but his report must have raised republican hackles when he pointed out how well the previously installed Federal financial architecture could provide funds and collateral for industrial ventures. Firstly, Hamilton echoed his argument from the *Report on Public Credit* that shares in the public debt could perform the function of currency. "Public Funds answer the purpose of Capital, from the estimation in which they are usually held by Monied men; and consequently form the Ease and dispatch with which they can be turned into money."<sup>171</sup>

Yet Hamilton's "system" also acted not only to provide a medium of value, but actually created more capital with which to invest. The reason for this is that the denominated amount of debt in circulation in any given year (which would theoretically



equal the amount of the entire outstanding debt) would always be significantly greater than the amount being removed from circulation through taxes (which would only total the amount needed to pay the annual installment on the debt). If in a given year, the Federal government pays six percent interest and retires two percent of the outstanding principal, then ninety-two dollars will remain in circulation for every eight that are removed. “[T]here will be *at every instant of time* during the whole period, in question a sum corresponding *with so much of the principal*, as remains *unredeemed*, in the hands of some person, or other employed, or ready to be employed in some profitable undertaking. There will therefore constantly be more capital, in capacity to be employed, than capital taken from employment.”<sup>172</sup> Thus the Federal government has, just as Hamilton claimed, essentially created capital that could be used in order to begin new enterprises, which would likely be mechanical in character.

To opposition eyes, this maneuver in particular represented the most basic threat to the future of the American republican political system. Among the fundamental tenets of republican ideology was the rejection of the use of power to draw distinctions between people, yet Hamilton was proposing to assign to government the task of, as they saw it, creating money out of thin air in order to reward those who sought to enrich themselves without working. Of course, from Hamilton’s perspective, it did not look like that at all. He believed that without a significant infusion of funds, the economy of the United States could not support important industries, some of which were necessary for national security. Thus the nation’s government needed to take some action to provide this capital. Since the sorts of taxes that might today fund such ventures were beyond the realm of contemporary economic orthodoxy, Hamilton had few available tools for such a task. His only real option was to encourage those with available funds to invest them in the American economy rather than putting it elsewhere, and without any authority to

compel such behavior, he had to make those investments as attractive as possible. Thus economic inequality was far from a scourge on society: in Hamilton's system, the money of the wealthy was absolutely *necessary* to the continued survival and health of the nation's economy.

Hamilton's concern for those playing the markets in government securities appeared to his opponents as nothing more sophisticated than elitist cronyism. His proposals, they feared, put the government in service to the personal interests of the Secretary of State and similarly situated individuals: Jefferson's feared "stock-jobbers." Though historians have cleared Hamilton of most of these charges and generally found his opponents' personal attacks somewhat paranoid and conspiratorial, his series of reports did pose a serious referendum on the future direction of American political economy. In their monumental work on the 1790s, *The Age of Federalism*, Stanley Elkins and Eric McKittrick resolved the many issues raised by Hamilton's intertwining financial programs.

On technical grounds of sound fiscal management that were impeccable, Hamilton had been able to justify a policy that nonetheless had broad ideological implications. The details of his financial administration coincided to the utmost nicety with his general philosophical purposes. No matter how closely his principles may have accorded with the public interest, or whatever else he may have accomplished in pursuing them, there was at least one outcome that could be trusted never to vary. Nothing he did was undertaken in a spirit basically hostile to the interests of a very special class in American society, those men in whose hands he still believed the nation's future prosperity rested. Nothing had altered for him the Humean vision of the merchant-enterpriser, the man of large affairs, as the type whose creative energies would transform the continent. True, the Virginians viewed that type through very different eyes, and the words they applied to him were not honorific ones. But otherwise they were really not wrong when they repeated in endless ways that Hamilton was using the financial power of the United States—as he had determined to do from the beginning—for the benefit of speculators.<sup>173</sup>

The first chapter of this dissertation presented the thesis that that American democratic capitalism is a system by which the nation has consistently subjected its economic system to the dictates of its political one. It was Hamilton's programs that forced this first set of decisions. With regard to political economy, then, these Hamiltonian reports brought to the fore a set of contradictions in republicanism that his political contemporaries might have preferred to ignore. In this particular arena, the myriad issues that divided Hamilton from his opponents could fairly be reduced to two: the first is nationalism, and the second is speculation.

In his history of financial speculation, Edward Chancellor notes that the term is difficult to define. Though "conventionally defined as an attempt to profit from changes in market price," such a description renders speculation difficult to separate from its more respectable sibling, "investment," and family black sheep "gambling."<sup>174</sup> Regardless of the definition, however, speculation is clearly outside the realm of virtuous behavior as defined by early national republican orthodoxy. Any system that tolerated, much less invited, this practice would be found, for that reason alone if for no other, completely outside the realm of acceptability. Yet Hamilton's entire financial program was designed to encourage speculation in government securities and then private enterprise, if only in service of the long-term goals of stabilizing the country's financial system and encouraging economic growth, respectively.

Moreover, Elkins and McKittrick are correct when they claim that "the demon of speculation may undoubtedly be seen as the demon of capitalism itself."<sup>175</sup> Frederic C. Lane once defined a capitalist society as one "so organized that men can make money by investing their capital,"<sup>176</sup> and this simple definition reveals a great deal. Paper certificates circulate in order to raise money for their original issuer. This financial need can arise from an outstanding obligation (as in the case of the funded debt) or the desire

to capitalize a new venture (as in that of the first Bank of the United States). The value of these pieces of paper will go up or down as the debt appears more or less likely to be paid,\* or the new enterprise courts success or failure. Only under capitalist forms of organization, however, will these new economic projects exist, or will any entities (other than government) run up debts significant enough that they require borrowing money to pay off. Put a different way, imagine a person in a feudal or socialist society were in need of a large sum of money. Because large-scale private enterprise does not exist, we must assume that the funds are needed for, say, debts accrued from a hedonistic lifestyle. But since the person is not borrowing money with the hope of making *more* money, he or she is not in a position to offer any financial incentive to entice potential donors, and no one would contribute funds to this cause. The need to raise large sums of money and the ability to compensate those who offer it are both necessary conditions for the existence of speculation, and these conditions only exist under capitalism. Thus neither Hamilton nor his opponents were interested in the fate of capitalism specifically, but in placing speculation at the center of the debate, they were in essence unknowingly fighting a proxy war over it.

Hamilton was counting on speculation to tie the fate of the wealthy to that of the United States. Administration opponents, on the other hand, saw speculation itself as inherently unvirtuous. Its principle drawbacks were two: economic and social. Voicing a criticism that is still popular in some circles today, administration opponents argued that speculation rewards those who produce no goods and perform no service. Socially and morally, they argued, it discourages work in favor of sloth. Thomas Jefferson voiced both of these concerns in a letter to George Washington a few months after the

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\* Or, under circumstances in which there is little doubt that the bond will be paid on the terms under which it was issued, its value will increase or decrease depending on how attractive those terms appear relative to other available opportunities in the given economic climate.

submission of the *Report on Manufactures*. He characterized “all the capital employed in paper speculation” as “barren & useless, producing, like that on a gaming table, no accession to itself.” Such monies are “withdrawn from commerce & agriculture where it would have produced addition to the common mass” and have furthermore “nourished in our citizens habits of vice and idleness instead of industry & morality.”<sup>177</sup>

Thus administration opponents saw tremendous threats to republicanism in Hamilton’s plan, but did not see capitalism, as it had not yet meaningfully developed anywhere in the world. At the same time, Hamilton was engaged in paving the way for American capitalism but formed no active intention of doing so. His concerns were, as has been shown, entirely nationalistic. Hamilton wished to make the American nation financially solvent, politically independent and militarily secure, and did not believe that it could meet any of these goals without a significantly larger and more diverse economy. To claim that Hamilton had nationalistic goals, however, is not to place him above the fray, as nationalism was also quite controversial in this period, dating back at least as far as the debate over Constitutional ratification. At that time, the anti-Federalists had argued not only that the consolidation of Federal power threatened the sovereignty of the states, but that the promise of strength and riches the new government could bestow on the new nation was absolutely the antithesis of that for which America should stand. Not all Americans benefited equally from increased commerce or a strong navy: to apply the power of the government to those ends is to privilege the desires of some over others, an action which therefore could not be further from the spirit of republicanism. “You are not to inquire,” said Patrick Henry on the floor of the Virginia ratifying convention, “how your trade may be increased, nor how you are to become a great and powerful people, but how your liberties can be secured; for liberty ought to be the direct end of your Government.”<sup>178</sup>

## RECEPTION AND SIGNIFICANCE OF THE REPORT

Though he had nursed romantic ambitions of military glory since his boyhood in the Caribbean, Hamilton was at heart a policy wonk. Despite the theoretical implications of the *Report on Manufactures*, specific policy recommendations, including a comprehensive list of materials and products that should be taxed, took up about half its pages. One proposal in particular, however, stood out as both unprecedented and controversial. Besides more traditional practices such as protective tariffs, prohibition of rival foreign goods and exemption from taxation of necessary raw materials, Hamilton also mentioned “pecuniary bounties,” or cash payments to those engaged in the manufacture of goods in which the government took a specific interest. Since Hamilton has demonstrated that it is in the best interest of the country to have the government subsidize manufacturing, the only question is that of the best method. Bounties are “a species of encouragement more positive and direct than any other.” Differential taxes on input goods do not affect foreign competitors, while duties on foreign goods raise all prices indiscriminately. Finally, duties “can have no influence upon the advantageous sale of the article produced, in foreign markets,”<sup>179</sup> unlike bounties, which, by directly aiding the manufacturer, can help promote U.S. exports by bringing prices down.

Hamilton is aware of the fundamental philosophical objection to his recommendation—the “appearance of giving away the public money...to enrich particular classes, at the expense of the Community.” Dismissing this argument, however, as a “prejudice,” he falls back on his nationalism. “There is no purpose, to which public money can be more beneficially applied, than to the acquisition of a new and useful branch of industry; no Consideration more valuable than a permanent addition to the general stock of productive labour.”<sup>180</sup> Here Hamilton’s proposals in the *Report on Manufactures*, like those involved in chartering a national bank, all turn on the notion that

they are good for the nation. But of course, administration opponents based most of their disagreements on exactly this point. The earlier Constitutional objections to the bank were based on the notion that Hamilton lacked the authority to charter that institution, and so whether or not it would be good for the country, or even its citizens, was in fact irrelevant. That argument did not carry the day, and administration opponents would argue differently against the provisions of the *Report on Manufactures*: these proposals were inherently threatening to the republican principles of governance, and therefore *not* good for the American people.

The argument about whether or not a specific government intervention in the economic order is one that may have started with Hamilton, Madison, Jefferson and their allies, but the structure of American democratic capitalism rendered it inevitable. As long as the government takes any responsibility for the performance of the economy—as Hamilton urged it to do by attempting to stimulate the manufacturing sector—then anything that it does will distort the results that the market would have otherwise delivered. Once abandoning the impossible task of being “neutral” about the economy, then the question will inevitably and continually arise as to what result the government would wish that economy to deliver and what means are acceptable to accomplish those ends. There is no “appropriate” amount of government intervention beyond which some line has been crossed: democratic capitalism will always draw this line in a local and contingent manner, in accordance with the will of the populace or, in that less democratic age, the representatives of their most elite members.

The example of the *Report on Manufactures* makes abundantly clear that there is no value-free position from which one can proclaim on the correct or, in this case, “truly republican,” role of government in economic affairs. Hamilton’s proposals, whatever their merits, were certainly presented in a sober fashion and supported with clear

arguments, but to administration opponents they were abhorrent. “By the close of the first session of the Second Congress in the spring of 1792,” writes Drew McCoy, the “ideological opposition to the emerging Hamiltonian system took on a bitter, at times hysterical, tone.”<sup>181</sup> For example, Madison expressed, in a private letter, great concern that the proposals would destroy the republican character of the United States.

You know also how extremely offensive some particular measures have been; & I will frankly own...that if they should be followed by the usurpation of power recommended in the report on manufactures, I shall consider the fundamental & characteristic principle of the Govt. as subverted. It will not longer be a Govt. Possessing special powers taken from the General Mass, but one possessing the genl. Mass with special powers reserved out of it.<sup>182</sup>

Indeed, in the span of about a year Madison would publish, in the opposition organ *National Gazette*, eighteen unsigned essays, including “Fashion,” mentioned above. All but two of them came out after Hamilton’s report and some of them dealt with it specifically, but nearly all of them expressed some opinion, always negative, on the issues that it raised. These articles provide an excellent expression of the manner in which the opposition framed their views of the *Report on Manufactures* and how they saw its larger implications.

Madison’s own economic plan was to form slowly over the next two years or so. It would come to focus, unsurprisingly, on maintaining the agricultural character of the American economy. Broadly speaking, the means to this end were twofold: maintaining positive relations with international trade partners in order to secure a supply of manufactured goods, and increasing the westward expansion of the United States, so that the country’s growing populations could have enough land to farm. Madison believed that European powers were desperate enough for American foodstuffs that the country could demand fair treatment, so he advocated punitive tariffs for nations that did not treat



the U.S. fairly (i.e., England). Hamilton's report, on the other hand, had made clear the Secretary's opinion that a densely populated manufacturing country would become a stronger one, and that until then picking commercial fights with the world's great powers would be futile and counter-productive. Madison and Hamilton, and their respective allies, disagreed with each other on every significant point.

Thus it is not insignificant that the first of Madison's series of essays (published before the *Report on Manufactures*) dealt with the subject of "Population and Emigration." In that article, Madison compared the situation of European emigrants to that of residents of the Eastern United States: those who leave one country for another provide a benefit to both their old and new homes, as they provide foreign markets for the place from which they emigrated. In a similar fashion, the American migrant, headed toward the west, can benefit both regions of the same country and should be similarly encouraged and celebrated. "Instead of lamenting then a loss of *three* human beings to Connecticut, Rhode-Island, or New-Jersey, the *Philanthropist*, will rejoice that *five* will be gained [due to eventual reproduction in more prosperous circumstances] to New-York, Vermont or Kentucky; and the *patriot* will be not less pleased that *two* will be added to the citizens of the United States."<sup>183</sup>

Despite his general opposition to the outlines of the Hamiltonian plan, on the date that it was formally submitted Madison was in magnanimous form; that day's paper found him surprisingly open-minded on the subject of the potential for the abolition of the state governments in favor of a stronger national one.

Let the [opponents of consolidation] continue to watch against every encroachment...[and] [l]et [those who favor it] employ their utmost zeal, by eradicating local prejudices and mistaken rivalships, to consolidate the affairs of the states into one harmonious interest; and let it be the patriotic study of all, to maintain the various authorities established by our

complicated system...and to erect over the whole, one paramount Empire of reason, benevolence and brotherly affection.<sup>184</sup>

The Virginian's proscription for the future conduct of this debate is remarkable for its lack of partisan vitriol. Even more important is its implied recognition that might be some merit in each of the opposing positions on this very divisive issue, and that both camps might have an ongoing role to play in the unfolding narrative of the nation's government.

After the release of the report, however, Madison's tone changed markedly. Some two and a half months later, he would give a list of three different "species" of government, none-too-subtly juxtaposing "republican governments which it is the glory of America to have invented" with the following, obviously Hamiltonian model.

A government operating by corrupt influence; substituting the motive of private interest in place of public duty; converting its pecuniary dispensations into bounties to favorites, or bribed to opponents; accommodating its measures to the avidity of a part of the nation instead of the benefit of the whole: in a word, enlisting an army of interested partisans, whose tongues, whose pens, whose intrigues, and whose active combinations...may support a real domination of the few, under an apparent liberty of the many. Such a government, wherever to be found, is an impostor.<sup>185</sup>

Again, where Hamilton formed his system in accordance with what he saw as a national need for the increased civic participation of the wealthy, Madison could only perceive that which his republican ideology would allow: a corrupt giveaway that enabled the powerful few to dominate the virtuous many.

Another essay, revealingly titled "Republican Distribution of Citizens," finds Madison arguing that the manufacturing takes a terrible toll on the health of the laborer. (This fact was then unquestionably apparent even to Adam Smith. Hamilton, however, expressed little concern over it, even claiming in the *Report on Manufactures* that one advantage of manufacturing is that it can tap into the underutilized labor of women and

children.) Echoing Jefferson's more famous panegyric, Madison extolled more than the farmer's health.

The class of citizens who provide at once their own food and their own raiment, may be viewed as the most truly independent and happy. They are more: they are the best basis of public liberty, and the strongest bulwark of public safety. It follows, that the greater the proportion of this class to the whole society, the more free, the more independent, and the more happy must be the society itself.

With regard to manufacturing, then, "[w]hatever is least favorable to vigor of body, to the faculties of the mind, or to the virtues or the utilities of life, instead of being forced or fostered by public authority, ought to be seen with regret as long as occupations more friendly to human happiness, lie vacant."<sup>186</sup> Another of his writings questioned the intrusive nature of Hamilton's plan with regard to property rights.

That is not a just government, nor is property secure under it, where arbitrary restrictions, exemptions, and monopolies deny to part of its citizens that free use of their faculties, and free choice of their occupations, which not only constitute their property in the general sense of the word; but are the means of acquiring property strictly so called...A just security to property is not afforded by that government, under which unequal taxes oppress one species of property and reward another species...where the keenness and competitions of want are deemed an insufficient spur to labor, and taxes are again applied, by an unfeeling policy, as another spur.

Yet the best gauge of the effect of the *Report on Manufactures* on Madison's thinking is the difference between the second essay in this series and the final one. In the earlier "Consolidation," he had painted a portrait of a government energized by a creative tension, and somewhat magnanimously offered an invitation to his political rivals. By April of 1792, merely four months after the *Report on Manufactures*, Madison would write an essay called "The Union: Who Are Its Real Friends?" The answer is hardly surprising. The unnamed but unlucky few who fail to fit into that category include "those who favor measures, which [pamper] the spirit of speculation within and without the

government,” “those who promote unnecessary accumulations of the debt of the Union,” and “those who study, by arbitrary interpretations and insidious precedents, to pervert the limited government of the Union.” Those who support the union, on the other hand, are friends to “the authority of the people,” “liberty,” “the limited and republican system of government,” and enemies “to every public measure that might smooth the way to hereditary government.” The friends of the union, summarizes Madison, “are friends to the republican policy throughout...in opposition to a spirit of usurpation and monarchy.”<sup>187</sup>

Taking Madison’s comments as representative, it is clear that *The Report on Manufactures* and the response to it had clearly drawn the lines between Hamilton and the administration’s opponents. For Hamilton, the report represented the culmination of the financial system that his earlier efforts and their attendant legislation had set in motion. For Madison, Jefferson and their allies it harbored nothing less than a victory for tyranny and the abrogation of the nation’s hard-won republican form of government.

Thus one might be forgiven for thinking that the two camps were headed for a major fight as the *Report on Manufactures* was voted upon in Congress. Yet such a showdown never occurred. Unlike Hamilton’s previous recommendations, the *Report on Manufactures* was never the subject of a systematic Congressional debate or an up-or-down vote. Indeed, the conventional historical wisdom is that the report garnered little legislative attention and somehow just withered away, and that the document is more important as a philosophical exercise than a political blueprint. In a recent article, however, economist Douglas A. Irwin has somewhat modified this perception. Pointing out that the House approved a bounty for the fishing industry (though it had to be recast as a “rebate” before garnering sufficient support) only a few months after the filing of Hamilton’s report, he argued that such actions were not anathema to that body.

Moreover, when Congress asked for Hamilton's advice on raising money to fight Indians in the West, he recommended the same tariffs he had first suggested in the report. The bill passed comfortably, even though some Representatives objected that an Indian fighting bill had turned into one to help manufacturing.<sup>188</sup>

Thus the most direct legislative result of Hamilton's *Report on Manufactures* was the somewhat inauspicious imposition of several tariffs. Moreover, when compared to either the desires of domestic manufacturers or the rates that would come to pass in the nineteenth century, these tariffs were fairly modest.<sup>189</sup> On a somewhat longer view, however, nearly all of Hamilton's recommendations would eventually be implemented, in a supreme irony, during the presidencies of Jefferson and Madison. Indeed, as the opposition to the Washington administration matured into a full-fledged political party, the newly-christened Republicans would increasingly represent the interests of manufacturers. The influence of subsequent events would find Jefferson himself rethinking his stance on the issue. Later in life and far removed from the presidency, the "sage of Monticello" would admit his change of heart. "We have experienced what we did not then believe...that to be independent for the comforts of life we must fabricate them ourselves. We must now place the manufacturer by the side of the agriculturist."<sup>190</sup>

With regard to the desirability of an industrial economic base, subsequent events might very well have proven Hamilton correct. Yet in terms of democratic capitalism, the significance of the *Report on Manufactures* has little to do with industrialism itself. While manufacturing is the subject that captivated the attention of those who would become the Federalists and the Republicans, this issue serves as a manageable proxy for understanding what functions they believed the national economy should serve. Neither faction explicitly sought to bring about a capitalist financial system *per se*: while Hamilton and his faction favored an economy that worked in the service of nationalist

goals—primarily financial stability and geopolitical independence—Madison, Jefferson and their allies insisted that such benefits were not worth the price of the expanded government power needed to bring them about.

The outcome of this debate, however, was somewhat ambivalent, at least at the time. Hamilton's debt funding system and the national bank were major accomplishments, though Congress did not renew the bank's charter when it expired in 1811. Moreover, after Jefferson won the presidency in 1800, the Federalists would never again be a nationally significant party. Yet it would be the Jeffersonians who would soon execute the most naked expressions of nationalist ambition to that time: the Louisiana Purchase and the War of 1812. Republicanism was conceived as a philosophy of opposition, and the reconciliation of its respect for liberty with the necessities of governing would be more difficult when Republicans themselves came to hold the power. As the Republicans would come to be known as the Democrats and shape the political landscape to their liking in the Age of Jackson, the nation's next reformulation of democratic capitalism would be defined by the tension between their respect for liberty, as expressed in the rapid growth of market forces, and their hostility to the growing inequality brought about by these liberties themselves.

## Chapter Four: Democratic Capitalism in the Jacksonian Era

Like many in the early nineteenth century who called themselves “Jacksonians,” Amos Kendall’s rise to political prominence would not have been possible in a previous generation. As the editor of the Kentucky-based *Argus of Western America*, Kendall’s journalistic profession had not adequately prepared him, according to prevailing standards, for the cultured world of Washington politics. “The journalist had hitherto been indulgently accepted as the friend or servant of the governing class,” wrote Arthur Schlesinger, Jr., “but never as an equal.”<sup>191</sup> The presidential victory of Andrew Jackson had changed much of that: as the embodiment of the idea of the “common man,” Jackson could invite Kendall to come to Washington as auditor of the Treasury. Later serving as Postmaster General under Jackson and his successor, Martin Van Buren, Kendall’s real influence was as a member of the “kitchen cabinet,” in which he was widely regarded as the administration’s resident intellect.

By 1841, however, Van Buren had left office after a humiliating rebuke from the voters, and Kendall, having also lost his administration post as a consequence of the “spoils system” initiated by Jackson himself, had started a new journal devoted to the Jacksonian message. The inaugural issue of *Kendall’s Expositor* opened with a column lamenting the fact that “the political power of our country is about to pass into the hands of men [the incoming administration of William Henry Harrison] whose object it is to expel from the government those simple and pure principles which...it has been our labor to introduce.” Kendall devoted his new enterprise to the defense and protection of these principles, which include the tenet that “to protect man in the possession of personal liberty, and the exercise of equal political power, is the first duty of government; and to protect him in the unmolested enjoyment of his own labor and skill, is its second.”

Kendall further established that the citizens who are most likely to see this equality threatened are those who lack significant wealth.

Our aim is...to call the earnest attention of every American freeman to himself and his children...and also to the principles and measures which are calculated insidiously to...make him the dependant of the idle and the rich, who, as a necessary consequence, will assume all the political powers of society...While asking the candid judgment of all honest men upon our principles and argument, we desire *more particularly* to be read by the FARMERS AND MECHANICS of our country, on whose restraining intelligence and virtue *especially* depend the purity of our government and the existence of rational liberty.<sup>192</sup>

The themes of Kendall's short Jacksonian manifesto—the characterization of political opponents as enemies of liberty; implied link between wealth, corruption and tyranny; and appeal to an independence and virtue accessible only to those who work with their hands—would have been entirely familiar to a Jeffersonian republican of a half-century before.\* Yet the title of Kendall's piece betrays a significant shift in American political thought since the Revolution of 1800: this tirade against the enemies of liberty did not invoke the name of republicanism, but of an ideal held in rather low esteem by the founding generation. It was called “What Is Democracy?”

If political thinkers of the early national period were wary of the country's slide toward both democracy and capitalism, the Jacksonian era was marked instead by a widespread embrace of both of these ideologies. The most visible manifestation of the new democratic trend was the expansion of the franchise to include those who owned little or no property, and this new class of voters ushered in the nation's first president from the Western states, a man who in turn saw himself as the protector of their interests. At the same time, Americans began to incorporate into their daily lives the practices and institutions associated with the market. The Jacksonian project, therefore, was tasked

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\* Significantly, however, by 1841 a latter-day Jeffersonian such as Kendall would include among the virtuous workers not only agriculturalists, but industrial workers as well.



with incorporating into a coherent program these two developing commitments and their attendant contradictions. As the republicanism of the preceding generation became increasingly less applicable to their nineteenth century concerns, the philosophy they developed advocated a separation of the affairs of government from those of the private economy. Seeing only the possibility of corruption in the integration of these two spheres, the Jacksonians rejected the notion that the Federal government could or should play any positive role in supporting the nation's commercial life. Perhaps the most concrete application of this theory occurred when Martin Van Buren divested Federal money from private banks during the immediate aftermath of a massive currency crisis; rather than acting to shore up the banks, the president aggressively emphasized the government's lack of responsibility for them. Van Buren's subsequent rejection by the voters, however, suggests that it would not be long before the people would demand a more active conception of governmental economic responsibility.

### **WHAT WAS JACKSONIANISM?**

Of all the political periods that segment U.S. history, the Jacksonian era poses the most significant challenges to modern patterns of understanding. Jackson himself was the beneficiary of a subaltern turn in American politics, and the celebration of the lower classes is an important rhetorical aspect of the movement.\* But this concern assumed a radically different form in the mid-nineteenth century than it would today. Modern political categories associate a concern for those at the bottom of the socioeconomic ladder with significant government intervention in the economy: the construction of the "safety net" requires wages-and-hours laws, workplace protections, social insurance of various forms and, inevitably, higher taxes. Jacksonians did make occasional moves in

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\* Though it should not be forgotten that this significant shift away from political elitism failed to include—both conceptually and in practice—over half the population, in the form of women, slaves and Indians.

this direction: as president, for example, Martin Van Buren issued an Executive Order limiting laborers on Federal projects to a ten-hour day. Overall, however, their major positions—abolition of property requirements for the franchise, laws that allowed business firms to incorporate without a special act of the legislature, destruction of the Second Bank of the United States—did not reflect an overarching desire to use government to uplift the common laborer and farmer.

The extreme foreignness of Jacksonian political and intellectual categories has led to competing interpretations of what the movement actually stood for. The contemporary debate begins with the publication in 1945 of Arthur Schlesinger, Jr.'s *The Age of Jackson*. Schlesinger convincingly overturned the conventional wisdom of the Progressive interpretation of the antebellum period, which saw Jacksonianism as a sectional phenomenon led by the egalitarian conditions of the frontier. Schlesinger challenged this interpretation on the basis of three major arguments. The first is fairly straightforward: the most significant Jacksonian actors and ideas, exhaustively catalogued in Schlesinger's book, came from the East and not the West. Secondly, Schlesinger took issue with the most basic premises of sectionalism and the myth of the frontier.

The great illusions of historians of the frontier has been that social equality produces economic equalitarianism. In fact, the demand for economic equality is generally born out of conditions of social inequality, and becomes the more passionate, deeply felt, and specific as the inequality becomes more rigid. The actual existence of equal opportunities is likely to diminish the vigilance with which they are guarded, and to stimulate the race for power and privilege. The capitalists of St. Louis and the land speculators of Mississippi were as characteristic of the West as Andrew Jackson.<sup>193</sup>

The most significant point of departure for Schlesinger, however, was the third objection: he argued that the primary concerns of the day did not pit regions against each

other, but classes. The book argued that, for Jackson, “the economic problem, the balance of class power, overshadowed all the questions of the day,”<sup>194</sup> and the movement that bore his name was devoted to addressing this issue. Generalizing far beyond the president himself to draw vivid portraits of politicians, journalists, religious figures and the many other personalities who united behind the Jacksonian banner, Schlesinger convincingly presented Jacksonianism as a social philosophy, rather than merely a party platform, and its followers as representatives of a cultural and political movement. On this view, the Jacksonian outlook was premised on the belief “that there was a deep-rooted conflict in society between the ‘producing’ and ‘non-producing’ classes—the farmers and laborers, on the one hand, and the business community on the other.” Taking the side of the producers, Jacksonians were committed to using the power of government on their behalf, as a counterweight to the influence of organized wealth, so that the United States could realize its promise of political and economic equality. The movement represented a “second American phase of that enduring struggle between the business community and the rest of society which is the guarantee of freedom in a liberal capitalist state.”<sup>195</sup>

Schlesinger’s extensive sourcing, sweeping scope and compelling narrative established *The Age of Jackson* as the definitive work on the subject almost immediately, and it won the Pulitzer Prize in 1946. Yet the book’s fate was similar to that of many such ambitious works; no sooner was it showered with accolades than it began to attract criticism. The most common complaint has been that Schlesinger himself, an FDR Democrat who would eventually serve in the Kennedy administration, was reading his present-day political commitments backward, imposing the ideology of the New Deal on the unwitting Jacksonians, most of whom would have recoiled in horror at the “big government” tactics of the later Democratic administration. Bray Hammond, who would

later win the Pulitzer himself for *Banks and Politics in America from the Revolution to the Civil War*, negatively reviewed Schlesinger's then-new book in the pages of *The Journal of Economic History*. In Hammond's view, Schlesinger expresses a "Manichean naïveté with respect to the nobility of all things Jacksonian and the sordidness of all things opposed."<sup>196</sup> Just a few months after its publication, Hammond foresaw the book's status as the definitive exposition of the Jacksonian period, and bemoaned that seeming inevitability. "I do not think it should be so considered. It represents the Age of Jackson as one of triumphant liberalism when it was as much or more an age of triumphant exploitation," and the book further "fosters a simplistic notion of continuing problems of human welfare."<sup>197</sup>

By 1948, Richard Hofstadter would issue, in *The American Political Tradition and the Men Who Made It*, what would become the standard critique of Schlesinger's account of Jacksonianism. Though readily acknowledging that the movement owed its success to the increased participation of "the propertyless masses" and their "common feeling"—encouraged by political operatives—"that popular will should control the choice of public officers and the formation of public policy,"<sup>198</sup> Hofstadter did not see this new class as ideologically opposed to business. Instead, its members generally hoped to become members of this financial elite themselves, and to use their new political power to reach this goal. In the wake of the financial panic of 1819, "[a] popular demand arose to prevent imprisonment for debt, for a national bankruptcy law, and for new tariff and public-land policies. For the first time many Americans thought of politics as having an intimate relation to their welfare."<sup>199</sup> It was under these circumstances that Jackson rose to political prominence, and his real gift was that of exploiting this environment better than others of his generation. To Hofstadter, the president was "a simple, emotional and unreflective man with a strong sense of loyalty to personal friends

and political supporters; he swung to the democratic camp when the democratic camp swung to him.”<sup>200</sup>

Yet when Hofstadter conceded that “those who have lived through the era of Franklin D. Roosevelt” can be forgiven for a tendency “to see in Jacksonian democracy an earlier version of the New Deal,” the unnamed target of his criticism was clearly *The Age of Jackson*. Hofstadter granted “superficial points in common” between the movements: both were “struggles of large sections of the community against a business elite and its allies,” and one could even find similarities between the “two dynamic landed aristocrats who led the popular parties.” But on the philosophical or ideological level, the two are fundamentally different.

The New Deal was frankly based upon the premise that economic expansion had come to an end and economic opportunities were disappearing; it attempted to cope with the situation by establishing governmental ascendancy over the affairs of business. The Jacksonian movement grew out of expanding opportunities and a common desire to enlarge these opportunities still further by removing restrictions and privileges that had their origins in acts of government; thus, with some qualifications, it was essentially a movement of *laissez-faire*, an attempt to divorce government and business. It is commonly recognized in American historical folklore that the Jackson movement was a phase in the expansion of democracy, but it is too little appreciated that it was also a phase in the expansion of liberated capitalism. While in the New Deal the democratic reformers were driven to challenge many assumptions of traditional American capitalism, in the Jacksonian period the democratic upsurge was closely linked to the ambitions of the small capitalist.<sup>201</sup>

Thus if an opposition between the lower and elite classes constitutes liberalism, then Jacksonianism was liberal. But a pro-business, *laissez faire* “liberalism” so befuddles contemporary political categories that the use of such a term obscures far more than it clarifies.

The next year, distinguished economic historian Joseph Dorfman issued a very similar criticism. Considering many of Schlesinger’s cast of characters one at a time,

Dorfman offered quotations and positions that cast doubt on the assertion that their thought could in any way be described as anti-capitalist. Calling Jacksonianism “antiaristocratic rather than anticapitalistic,” he noted that this outlook explains how the movement could “combine both humanitarian and business elements.” Like Hofstadter, Dorfman leveled at Schlesinger the charge of intellectual anachronism in viewing Jacksonianism as a precursor to “the radicalism of our own time.” Arguing that one cannot “read into” the period “the later conception of a class conflict between great capitalists on the one side, and a mass of propertyless wage earners on the other,” Dorfman proclaimed that “the movement is a liberal one,” not by virtue of opposing capitalism, but only “in the sense that it sought to eliminate or hedge law-created privileges.”<sup>202</sup>

More recently, legal historian Herbert Hovenkamp has echoed the formula of Hofstadter and Dorfman, while providing the most clear and succinct statement of the essence of Jacksonianism. In *Enterprise and American Law*, Hovenkamp argued that the dominant nineteenth-century intellectual movement—one that he called “classicism”—held as its “fundamental premise” the notion “that the government should not play favorites.”<sup>203</sup> This idea had applications in economics, politics and law, and served as a unifying theory for much of the nineteenth century, but was, in its essence, “a Jacksonian phenomenon.”<sup>204</sup> Noting that “liberal critics today are inclined to view the classicists through the lens of the Progressives and the policy makers of the New Deal,” Hovenkamp rejects as anachronistic the notion that the Jacksonians, who certainly saw themselves as the champions of the working classes, could not claim this mantle because of their opposition to government market intervention.

To be a classicist was to be opposed to state intervention on behalf of the rich and the politically powerful. Classicism achieved its popularity in the United States in a political movement, Jacksonianism, that was heavily

supported by society's disfavored classes. The issues were not welfare and subsidized education. Rather, they were special corporate charters or licenses that gave unique privileges to engage in business to certain favored people while denying access to others. When Federalists intervened in the market, the immediate beneficiaries were generally people of property. In such a regime, arguments for a noninterventionist state leaned to the left, not to the right. To be a classicist in the 1830's was to be a liberal.<sup>205</sup>

This important distinction summarizes both what is definitive about the wide-ranging intellectual commitments of Jacksonianism, and what makes it so terribly confusing today. Against a political background defined by opposition to the old Federalist program that used government economic invention for the purposes of shoring up the elite classes, a populist movement of the early nineteenth century could only be one that opposed such intervention.

Nonetheless, contemporary audiences might find the Jacksonian impulse to be reminiscent of the late twentieth-century populist conservatism in the mold of Ronald Reagan, rather than the statist inclinations of the New Deal. Like the previous comparison, however, this one is more limiting than it is instructive. Though Jacksonians certainly embraced the then-new entrepreneurialism with the same zeal of their latter-day counterparts, their resistance to the integration of politics and economics did not rest on claims of the relative efficiency of the market versus government, as did the later conservatives. Instead, the Jacksonian fear of centralized power was firmly rooted in Jeffersonian concerns over the tendency of government to pave the way for corruption and tyranny, and Jacksonians often opposed even beneficial projects and programs if they involved an expansion of Federal power. Their support for "internal improvements" was limited to those projects supported by the states, as evidenced by Jackson's claim that the Federal government could not fund the Maysville Road without an amendment to the Constitution permitting it to do so.<sup>206</sup> In short, the Jacksonian desire that "the government

not play favorites” was so strong that it could lead this group toward positions that the later political movement would unequivocally deride as “anti-business.” Secondly, late twentieth-century Republicans paid relatively little concern to problems of poverty and inequality and, to the extent that these were motivating concerns at all, Reagan’s supporters were likely to believe that they could be solved with economic growth. Thus even the problems of the underclass justified the same pro-business policies—in particular targeted tax cuts—that Jacksonians would have eschewed. Antebellum Democrats, on the other hand, were far more likely to view their primary economic concerns, in particular those relating to the money supply, as examples of a zero-sum game, and therefore never seemed to tire of railing against the “moneyed power” whose influence needed to be curtailed. Latter-day conservatives would unequivocally reject both this language and the thought behind it as reflective of an appeal to “class warfare,” an object of their particular disapprobation.

Yet the greatest distinction to be made is far less tangible. In seeking to explain Jackson’s appeal and worldview to a contemporary audience, Sean Wilentz acknowledges that anachronistic readings of Jackson could conceivably place the “southwestern slaveholder and military hero with populist appeal, who believed in limited government” as a “forerunner of Ronald Reagan and George W. Bush.” But in Jackson’s own day, those same cultural markers marked him most centrally, not as a representative of the status quo, but as one who embodied a new sort of American. As such, most Americans equated Jackson and his political project with a rejection of tradition. While today’s Republicans label themselves as “conservatives” with great pride, Jackson and his followers aligned themselves “with the forces of movement rather than of order, on the side of egalitarianism and against privilege.”<sup>207</sup> Nearly two centuries on, this particular facet of the movement might seem like so much empty political



posturing. But Americans of the time, whether supporters or enemies of Jacksonianism, saw this distinction as a central one.

One point on which all observers agree is that Jacksonians saw themselves as the intellectual heirs of Jefferson. Schlesinger wrote of Jacksonianism that “[b]asically, it was a revival of Jeffersonianism,”<sup>208</sup> and, of course, the movement’s political vehicle, the Democratic Party, was directly descended from Jefferson’s Republicans. Yet the times had changed since the “sage of Monticello” has originally formulated his political principles, and the means of applying those ideas to the situation that characterized the 1820s and 30s were not entirely obvious. The agricultural ideal had to give way somewhat in order to accommodate the fact of the nation’s growing industry, Jeffersonian egalitarianism never meant to extend the franchise so far as to include those without property, and the (always somewhat hypocritical) concerns for republican virtue had been overthrown by the growing desire of every American to better his or her financial situation.

A decade after Schlesinger and Hofstadter had pronounced on Jacksonianism, Marvin Meyers offered its most fundamental characteristic as the attempt to adapt comfortable Jeffersonian pieties to a rapidly changing world. Meyers essentially agreed with all the earlier characterizations of the movement, noting that his research had uncovered “distinct traces of every theme used by historians to explain the nature and import of Jacksonian Democracy,” which included “equality against privilege, liberty against domination; honest work against idle exploit; natural dignity against factitious superiority; patriotic conservatism against alien innovation; progress against dead precedent. A first ungraded inventory shows only a troubled mind groping for names to fit its discontent.”<sup>209</sup>

Meyers concluded from this slightly puzzling rhetorical analysis that, at the most basic level, the Jacksonians wished to throw open the gates of democracy while retaining whatever stability had been provided by Jeffersonian republicanism.

Now Jacksonian society was caught between the elements—the liberal principle and the yeoman image—and tried again to harmonize them. Americans were boldly liberal in economic affairs, out of conviction and appetite combined, and moved their world in the direction of modern capitalism. But they were not inwardly prepared for the grinding uncertainties, the shocking changes, the complexity and indirection of the new economic ways...[T]hey hoped to have their brave adventures, their provocative rewards, their open-ended progress, and remain essentially the same. The practical outcomes of the free pursuit of economic interest had never been legitimated, or even fully associated with the abstract liberal principle. Yet the ideological and material attachment to the liberal code was too deep to be severed, even in considerable distress. Thus many found in the anti-Bank crusade, and in the Jacksonian appeal generally, a way to damn the unfamiliar, threatening, sometimes punishing elements in the changing order by fixing guilt upon a single protean element. A laissez-faire society with this source of corruption cut out would re-establish continuity with that golden age in which liberty and progress were joined inseparably with simple yeoman virtues...In this direction one can begin to meet the Jacksonian paradox: the fact that the movement which helped to clear the path for laissez-faire capitalism and its culture in America...held nevertheless in their [sic] political conscience an ideal of a chaste republican order, resisting the seductions of risk and novelty, greed and extravagance, rapid motion and complex dealings.<sup>210</sup>

Jacksonianism was the embodiment of the tensions between the Liberalism that underwrote many attractive policies and activities, and the republicanism that still exerted a strong moral force in the opposite direction. It also derived much of its energy from conflicting commitments to *laissez faire* and a “bottom-up” egalitarianism. Undoubtedly one of the reasons why the categories of Jacksonian thought so confound modern audiences is that they frequently contradict one another.

For our purposes, however, the most relevant such contradiction is between the explosion of democracy in the nineteenth century and the concomitant rise of the market

as an increasingly routine factor of everyday life in the United States. As the Jacksonians were the first generation of Americans who would deal with both democracy and capitalism on terms similar to those we employ today, they were also the first to face the conflict between the two systems. Their solution to this problem was to keep the political realm separate from the economic one, so that government-bestowed privileges cannot elevate one economic player over another one. This outlook is similar to the one discussed, on a theoretical level, in Chapter One. The Jacksonian experience with it corroborates that earlier observation: it is an impossible theory to put into practice.

The event that most clearly illustrates this point is the controversy surrounding the Independent Treasury Bill during the presidency of Martin Van Buren, the so-called “third term” of the Jackson administration. After Jackson himself vetoed the charter of the Second Bank of the United States, financial panic ensued and Van Buren faced the difficult decision about what to do with the Federal funds, which were stored in private, state-chartered banks. Since many banks were failing, keeping the money in a private institution was obviously unwise; but none of the president’s other options were any more attractive. Schlesinger summarized the president’s predicament this way.

Van Buren now faced three possibilities. He could struggle on with the state-bank system. He could retreat gracefully, strike the Jacksonian flag and restore the big Bank. Or, he could head into the gale, fight the hard-money policy one step further and urge the separation of the fiscal affairs of the government from all banks...The third system—divorce of bank and state—was untried. It found its only backing among intellectuals and radicals.<sup>211</sup>

Van Buren selected that third option, and eventually succeeded in passing the Independent Treasury Act in 1840, the final year of his presidency. The controversy over the policy, however, came to define Van Buren’s administration. The ultimate failure of divorce represented the rejection, on the part of the American people, of the idea that the

paramount government responsibility with regard to the economy is to avoid tampering with it. The newly empowered democratic masses instead wished to see government use its power to ensure an equal ability to participate in the market, which would seldom be the result of such “hands-off” policies.

## **JACKSONIAN DEMOCRACY**

As we saw in the previous chapter, the nation’s founding generation did not see themselves as initiating a democracy, nor would its members have been excited to see their achievement so described. The prevalent conception of democracy was that, as a form of government, it tended to replace the elegant machinations of the republican balance of political interests with an incessant appeal to the lowest common denominator. Madison spoke for this consensus when he decried democratic polities in *Federalist Ten*. Under such governments, he argued, “there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property.”<sup>212</sup>

By the 1820s, however, this attitude had begun to change. The most significant development in this regard was a trend toward what became known as “universal suffrage,” a phrase referring to the abolition of the property requirement for voting. Though modern-day readers might chafe at the pretence that the word “universal” could apply to a movement that excluded so many—women, African Americans, Native Americans—the trend away from property ownership as a voting requirement was a tremendous conceptual shift in the move from republicanism to democracy. In his book on the expansion and restriction of the franchise in the United States, Alexander Keyssar points out that the “lynchpin of both colonial and British suffrage regulations was the restriction of voting to adult men who owned property.” Though simple class prejudice

played no small role in underwriting these restrictions, such limits were not incompatible with republican political ideals, which offered two primary justifications for them. First was the prominent belief that those who held real property were dedicated to the success of their society in a way that those without it could never be; “freeholders” had a built-in motivation to take care of the polity in their desire to preserve the value of their land. The second reason that Keyssar cites would be familiar to any student of Thomas Jefferson: “property owners alone possessed sufficient independence to warrant their having a voice in governance...Conversely, the ballot was not to be entrusted to those who were economically dependent, because they could too easily be controlled or manipulated by others.”<sup>213</sup> Since the republican ideal depended upon the ability of virtuous citizens to put aside their selfish concerns in order to detachedly consider the wider society’s needs, those without property are simply incapable of perpetuating its tenets. In 1838, James Fenimore Cooper voiced this criticism in his political commentary titled, not insignificantly, *The American Democrat*. “[W]hen the pressure of society shall become so great as to compel the man of small means to depend on the man of large for his comforts, or even for his bread, as is the natural tendency of all civilized society, the power of money will probably be felt adversely under a suffrage that includes all, or as nearly so, as is practicable.”<sup>214</sup> Under this republican logic, universal suffrage meant nothing less than an assault on the viability of the nation itself.

Thus the expansion of the franchise represented something different than merely an increase of citizen participation in an already-established republican political project. Whether intended as such or not, it was instead a challenge to this ideological approach: rather than an adjustment to republicanism, democracy became its successor as the dominant political ideology in the United States. Significantly, however, the most important political trend of the first half of the nineteenth century took place at the state,

rather than the Federal level. Unlike the seemingly paradigmatic advances in the right to vote, such as the Fifteenth and Nineteenth Amendments, or the Voting Rights Act of 1965, the march toward “universal suffrage” was a state-by-state affair.

In the half-century or so before 1855, all thirty-one states held at least one constitutional convention, and among the most significant issues at nearly all such meetings was the distribution of power throughout the states’ newly expanding and economically diverse populations. “The course of things in this country,” exclaimed New York delegate Nathan Sanford in 1821, “is for the extension, and not the restriction of popular rights.”<sup>215</sup> The facts seemed to support Sanford’s claim: Delaware had eliminated its property requirement as early as 1792, and no newly-admitted state ever required the possession of real property in order to vote. Though Virginia held onto such qualifications for all elections until 1850, and North Carolina restricted Senatorial elections to the holders of real property until 1856, Keyssar nevertheless summarized the overall trend as one toward greater suffrage. “By the end of the 1850s, only two property requirements remained in force anywhere in the United States, one applying to foreign-born residents of Rhode Island and the other to African Americans in New York.”<sup>216</sup>

Of course, the reasons for extending political participation to the less well-off were not entirely noble. Demographic change produced a swelling in the number of people who could not meet property requirements; to deny the vote to such large majorities was to risk social unrest. At the same time, newer states used an expanded franchise as an incentive to attract settlers. Inevitably, political parties hoped to benefit from extending the vote to this or that category of voters, on the assumption that the members of the newly-included group would cast their ballots favorably. Racial components played a role as well, particularly in the South: abolishing property restrictions while retaining racial ones served to create a solidarity among whites that

might not otherwise exist in a society exhibiting an increasing economic stratification. Finally, Keyssar points out that a traditionally discounted cause of allowing more people to vote is of great significance: the ongoing need, throughout American history, to satisfy the requirements of various military campaigns. Since armies are often made up of members of “the so-called lower orders of society,” it has traditionally been “rhetorically as well as practically difficult to compel men to bear arms while denying them the franchise.” Additionally, the political and economic necessities of such engagements “meant mobilizing popular support, which gave political leverage to any social groups excluded from the polity.” Though the notion that American egalitarianism grew organically from the conditions imposed by life on the frontier still holds attraction for many, Keyssar rejects it. “While it may seem less exceptional and romantic than the frontier, without doubt war played a greater role in the evolution of American democracy.”<sup>217</sup>

No matter what the reason, the political situation was changing in the early nineteenth century and prevailing social philosophies were forced to adapt to it. This accommodation took the form of the growing acceptance and even celebration of “democracy” as a description of politics—both actual and ideal—in the United States. The definitive commentary on the antebellum United States is, of course, Alexis deTocqueville’s *Democracy in America*. Written during the height of Jacksonianism, its two volumes were first published in 1835 and 1840, respectively. The work leaves no doubt that the United States had become by that time a democratic nation, rather than a republican one, and that Tocqueville, at least, finds democracy to be so essential to the American way of life that it is properly understood as a phenomenon whose influence spread beyond politics into the larger culture. “There are many important things to be said about the social conditions of the Anglo-Americans,” argued Tocqueville, “but one

feature dominates all the others. The social state of the Americans is eminently democratic.”<sup>218</sup>

This was not an empty claim on his behalf: Tocqueville saw the effects of democracy everywhere in American society. Democracy is the reason why public officials in the United States do not wear uniforms<sup>219</sup> and taxes are higher in this country.<sup>220</sup> Because citizens of a democracy feel personally responsible for all the actions of their government, they view criminals as “an enemy of the human race,”<sup>221</sup> and exhibit an “annoying” and “irritable patriotism.”<sup>222</sup> Democracy, by forcing upon each person a concern for the opinions of others, has removed from the United States “independence of mind and true freedom of discussion.”<sup>223</sup> With regard to intellectual pursuits, the “literature of a democracy will never exhibit the order, regularity, skill, and art characteristic of aristocratic literature; formal qualities will be neglected or actually despised.”<sup>224</sup> At the same time, historians from democratic cultures are more likely to view sweeping social changes, rather than individual actions, as the causes of particular events.<sup>225</sup> Most of Tocqueville’s observations were possessed of great insight; others—such as the claim that pantheism is the philosophical doctrine “most fitted to seduce the mind in democratic ages”<sup>226</sup>—arguably less so.\* Some were flattering to his hosts and some were not, but what is clear is that Tocqueville did not think that one could speak meaningfully about the United States without reference to a political orientation that would have been universally scorned in that country half a century before.

Of the many points to emerge from Tocqueville’s voluminous consideration of the antebellum United States, perhaps the most significant is that democracy, both as a form of government and a guiding ideal, was a well-established feature of American life

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\* This claim might be less ludicrous than it sounds, when considered against the fact that the time in which Tocqueville was writing coincided with the height of Transcendentalism. That doctrine’s insistent paeans to nature make it about as pantheistic as a radical individualism can be.



by the time of his writing. During this period, one person served as both the potent symbol of this trend and the political vehicle for its implementation: Andrew Jackson, the seventh president of the United States. In *Democracy in America*, Tocqueville noted Jackson's tremendous popularity, going so far as to clarify the president's political views in order to counter the impression, evidently common in Europe, that he was a demagogue.

Far from wishing to extend federal power, the present President [sic] belongs to the party which wishes to limit that power to the clear and precise terms of the Constitution and never to allow it to be interpreted in a way favorable to the Union's government; far from standing as the champion of centralization, General Jackson is the spokesman of provincial jealousies; it was *decentralizing* passions (if I may put it so) that brought him to sovereign power. He keeps his position and his popularity by daily flattery of those passions. General Jackson is the majority's slave; he yields to its intentions, desires, and half-revealed instincts, or rather he anticipates and forestalls them.<sup>227</sup>

Though Tocqueville did not present the president's views in the most flattering terms, his characterization was largely accurate. Jackson believed in the people as much as they believed in him, and consequently served as a significant bellwether of the change in American political ideals. Born in South Carolina shortly after the death of his father in 1767, Andrew Jackson was raised in modest conditions and received little formal education. At thirteen, he joined a rebel militia in the Revolutionary War, an event whose impact would significantly alter his young life. The cut on his head that he suffered from a British officer's sword formed a permanent scar, and his mother and both of his brothers died within the year, victims of war and disease.

After the war, he turned his hand to the law, one of the few avenues then available for upward mobility. Jackson practiced briefly before securing an appointment as solicitor (prosecutor) of Jonesboro, on the western edge of North Carolina (now Tennessee). The post's limited appeal recommended itself, according to Jackson

biographer H.W. Brands, “chiefly to lawyers lacking profitable practice in the East,”<sup>228</sup> but Jackson shortly made his way even further west, to the frontier town of Nashville. There he expanded his activities to include land speculation and commerce (including some traffic in slaves), becoming such a solid citizen that he would represent the new state of Tennessee as its first Congressman in the House before moving on to the Senate when a vacancy opened the next year.

These two postings would occupy Jackson’s attention for only a short time, as he would soon return to Tennessee upon finding legislative politics unsuitable to his taste. More exciting to him was the prospect of again fighting the British and the several Native American tribes with whom they had allied against the United States. He got his opportunity as the leader of the Tennessee militia in the War of 1812. A major victory over the Creeks at Horseshoe Bend earned him an appointment to the United States Army as a major general. In that capacity, his units forced the self-destruction of a Spanish fort being used by the English at Pensacola, and at New Orleans Jackson inflicted a particularly deadly and humiliating British defeat. By this point, declares Brands, “[i]n the eyes of most Americans, he was the greatest hero since Washington.”<sup>229</sup> Holding this post for nearly two decades, Jackson’s popularity only grew as he played a leading role in the Seminole War, in which he again occupied Pensacola, this time prompting the Spanish to cede Florida to the United States.

After retiring from the military, Jackson again entered politics, returning to the Senate in 1823. Running for president in 1824, he received more of the popular vote than any of the other three candidates, gaining what he saw as the only relevant mandate: the choice of the people. But when no candidate had a clear majority in the electoral college, the election was thrown to the House, where the Representatives voted between Jackson, Vice-President John Quincy Adams and Secretary of the Treasury William Crawford.

When influential Congressman Henry Clay of Kentucky threw his support to Adams only to be offered the position of Secretary of State after Adams's victory, Jackson was livid about what his supporters soon began calling a "corrupt bargain." The Jacksonians almost immediately began pushing their man for the next election, and in 1828 the presidency was his.

Up to this point in American history, all of the nation's presidents had been members of the eastern elite. Jackson's background—western, modest and unschooled—was, in short, common. Similarly novel was his base of support, which rested upon a tremendous popularity among the newly enfranchised masses. Jackson reciprocated the trust placed in him, believing that the political power can only be legitimately grounded on the desires of the people. In his first annual message to Congress, he called for an elimination of the electoral college, on the grounds that "as few impediments as possible should exist to the free operation of the public will."<sup>230</sup> At the end of his term, he expressed the same convictions. "Never for a moment believe," he told the nation in his Farewell Address, "that the great body of citizens...can deliberately intend to do wrong."<sup>231</sup> Though Jackson's paeans to the ordinary American may sound empty and clichéd today, historian Harry Watson has pointed out that in nineteenth century America they represented a real ideological commitment.

In fact, the economic changes of his era generated numerous demands by minority "factions" for tariffs, subsidies and other special privileges from the government. All the petitioners promised public benefits in return for their private advantages, but Jackson saw their efforts as "corruption" and he had them specifically in mind when he denounced the notion of special privilege. Even worse, in his view, were Northern and Southern agitators of the slavery question, who threatened to tear apart the federal union as they pressed their social theories upon the nation as a whole. Majority rule was thus no platitude in Jackson's day; it was advocated as a controversial alternative to contemporary movements that seemed to threaten the Union itself.<sup>232</sup>

Jacksonianism and democracy arose concurrently in the United States. Though eventually the second would survive the passing of the first, becoming an essential feature of American self-identity, in the antebellum mind the two were intertwined and difficult to distinguish one from another. At the same time, however, the new economic ideology of capitalism was becoming more prominent in the United States as a result of the intrusion of the market into everyday practices. The Jacksonian political response to these developments—to honor both ideas by keeping them separate from each other—would, for a time, serve as a rallying point for the president’s many supporters.

### **THE MARKET REVOLUTION**

In observing that “the Americans put something heroic into their way of trading,”<sup>233</sup> Tocqueville identified what was becoming a central characteristic of the Jacksonian United States. At this point, most Americans still provided for themselves directly from the land, but industrial production, commerce and even market-oriented (rather than subsistence) agriculture were all becoming more prominent in the antebellum period. The fact of greater economic interdependence imposed an acceptance of it; as the Jeffersonian ideal of independence became less attainable, Americans subsequently devalued it. At the same time, the lure of greater riches and possibility of social advancement, which had been unattainable to most in the “subsistence-plus” agricultural markets of earlier generations, rendered the Liberal celebration of self-interest more attractive than the republican eschewal of it. Jeffersonian republicanism, which had once provided to early national Americans a unified theory of political economy, was on the defensive not only from democracy on the political front, but also from a nascent capitalism on the economic one.

Foremost in the integration of the market into American life was the impact of large-scale investments in transportation. In the colonial era, approximately 85% of

Americans provided their own subsistence through farming, and the underdeveloped economy could not provide the conditions for this to change. The lack of a market for excess goods gave families little reason to produce more than they needed, but without this surplus production, farmers had nothing to exchange for other products. Thus the society could provide no incentive for those who might wish to produce a more diverse array of goods or services.

The primary reason for the inability of farmers to sell their goods was the unavailability of shipping. Though the advanced state of British navigation afforded some opportunities for export, the options for overland travel were quite poor. In 1816, the cost of shipping a ton thirty miles overland was the same as shipping that ton to England. In the early nineteenth century, roads often failed to connect given locations, and those that did exist were muddy, uneven and filled with tree stumps and other obstacles. Statistics from this period, for example, assess the cost of shipping a bushel of wheat from Buffalo to New York City at three times the value of the wheat. As a result, only the farmers who lived near the ocean or on navigable rivers found it worth their while to produce for the market.

But this situation changed markedly as a result of what George Rogers Taylor originally named the “transportation revolution.”<sup>234</sup> The most significant development in this regard was the canal. The Erie Canal, completed in 1825, was both the first and the most successful of these. Connecting New York City with what is now the upper Midwest, it reaped a tremendous profit for its operator—the State of New York—and proved an even greater boon for the larger society. According to Jeremy Atack and Peter Passell, “[p]ork that might have cost as much as \$10 a barrel to wrestle over the Appalachians from Cincinnati to New York in 1820 could be transported by water for about \$3.50 a barrel in the 1830s...Over the same period, the differential in the price of

flour was cut roughly in half.”<sup>235</sup> Similar gains came from steam power, which allowed for goods to travel upriver rather than only in the opposite direction. Railroads, though not yet occupying the dominant position they would achieve after the Civil War, would have a significant impact in the antebellum period, as they could provide cheap shipping to landlocked locations, and ran in the winter and in bad weather. The nation’s first railroad, the Baltimore and Ohio, was chartered in 1828, and by 1839 the United States could boast of 3,000 miles of operating track.

The cumulative effect of these developments was to bring about greater integration of the country economically, and to increase the significance of the market in the lives of more Americans. The more productive Western farmers of the Ohio Valley now competed directly with Easterners, accelerating the importance of commerce and industrialism in the latter area. With greater connectivity between regions and the possibility of wealth to be had in the newer areas, Western emigration and land values both increased significantly. States became more involved in promoting local economies with the construction of these transportation-related “internal improvements,” while the more timid (and significantly republican) Federal government generally restricted itself to those projects that served some clearly national and Constitutionally-sanctioned projects, mostly those that could be related to defense. These economic and technological changes began a process that would significantly alter the character of life in the United States.

This period also saw the beginning of the trend toward industrialization in the American economy. In 1791, Alexander Hamilton founded an organization, the Society for the Establishment of Useful Manufactures, to coordinate and facilitate industrial production products. Though mismanaged and generally considered a failure, it was nonetheless a harbinger of the nation’s future economic development. American industrial production was also promoted from an unintended source: President

Jefferson's 1807 embargo of the British and the subsequent War of 1812 forced the country, being denied British imports, to begin producing many of its own goods.

New England was the first region of the United States to turn to industrialism, as the relatively poor arability of its land made its citizens most susceptible to competition from Western farmers. As early as 1790, the nation's first textile mill had opened in Pawtucket, Rhode Island, and the tremendously successful Lowell mills had begun operations in Waltham, MA in 1814. In 1820, an already low 58 percent of Massachusetts's labor force worked in agriculture; by 1850 that figure would decrease to 15 percent.<sup>236</sup> Though textiles were the most significant industrial product of the early nineteenth century, sectors such as iron, lumber, shoemaking, flour and blacksmithing slowly but steadily increased in numbers until the Civil War. Often stimulated by high protective tariffs, industry became an increasingly prominent aspect of the American economy.

The net result of these developments is what Charles Sellers referred to as the "market revolution" in his 1991 book of the same name. The intrusion of market forces into a primarily agricultural nation, he argued, was not only a technological and economic phenomenon, but one that exerted a significant cultural pull as well. Tracing a long-term dynamic in play since before the founding of the United States, Sellers claimed that the fundamental dynamic characterizing the Euro-American settling of the North American continent has been the contrast between the land and the market. In Europe, land had been beyond precious: virtually all arable soil had been cultivated, and the only way that one could come to own property was to inherit it. Upward mobility did not exist, and whatever prosperity was available lie in the direction of producing commodities for the market. Once unleashed there, these market forces altered the traditional priorities regarding the use of both labor and raw materials. "As the division

of labor rationalized and multiplied production, money value allocated natural resources and human energy.” The New World, with its abundant supply of land, “easily wrested at first from its aboriginal populace,” would offer to Europeans the prospect of escaping this unattractive equation, and “elevating them to landowning security and respect.”<sup>237</sup>

Just as the market had displaced the soil as measure of and guide to value in Europe, the newly available New World land imposed market conditions on North America that were unrecognizable to Old World sensibilities.

With farm ownership readily attainable, Euro/Americans would not labor for others except briefly and at high wages. A few years of high wages financed enough cheap land to yield a comfort and independence inconceivable to poor Europeans. With wages too high for most farmers to pay, production was limited—no matter how much land they had—by the family labor available...The resulting society of roughly equal landowning families was the seedbed of American republicanism.<sup>238</sup>

With land more-or-less available to anyone willing to put in the work to get it, a philosophy extolling the independence of cultivators could incorporate an anti-elitist message that would have been simply contradictory in Europe. Moreover, the fact that most Americans worked on farms and plantations to provide their own sustenance meant that there were few goods that anyone needed to buy and a definite lack of people to manufacture such goods. Thus the appeal of Jeffersonianism in the early national period depended upon two contingent factors: the availability of land and the unattainability of market goods for the majority of citizens.

As the population grew in the East, market forces played a greater role there and conditions in that region took on a decidedly European cast. Yet the country’s interior still admitted of cheap land and expensive labor, so Americans who lived in the West found the market to be far less attractive. Despite the shorter distances, overland travel to the major commercial centers was more expensive than sea routes from those cities to



Europe; the result was that the United States, on the eve of the Jacksonian moment, admitted of two significantly different ways of life.

Profound cultural differences arose from these contrasting modes of production. The market fostered individualism and competitive pursuit of wealth by open-ended production of commodity values that could be accumulated as money. But rural production of use values stopped once bodies were sheltered and clothed and bellies provided for. Surplus produce had no abstract or money value, and wealth could not be accumulated. Therefore the subsistence culture fostered family obligation, communal cooperation, and reproduction over generations of a modest comfort.<sup>239</sup>

The War of 1812 had provided a bottleneck against economic expansion, and its resolution consequently unleashed a torrent of commercial activity. Furthermore, market practices and values were brought to new areas as a large demographic bulge of Europeans and eastern Americans descended upon the Western states and territories. The resulting integration of the market into areas of life it had not previously touched therefore altered nearly every aspect of American culture. Moreover, the fact that this new force was not uniformly welcomed meant that any political movement hoping for widespread support would have to address this market revolution, appealing to its supporters and detractors alike.

Thus Jacksonianism was a response to the dislocations that the increased prevalence of market forces wreaked upon American culture in the 1820s and '30s. On Sellers's telling, those threatened by the boom-and-bust cycle that always accompanies these developments developed a new political movement to roll them back. A coalition of Western agrarians and Eastern laborers thus founded a new style of democratic politics, "aggressively egalitarian in style and antidevelopmental in substance."<sup>240</sup> Under this interpretation, Jacksonianism was an aggressively anti-capitalist movement. "Asserting premarket values against all respectable opinion, Jackson mustered democracy

to defend patriarchal independence, equality, and therefore honor, against an activist capitalist state.”<sup>241</sup> On his interpretation, argued Sellers, “Schlesinger may yet be judged more nearly right than his critics.”<sup>242</sup>

It is possible, however, to accept the premises of this account without its conclusions. That Jacksonianism was a response to changes wreaked by new economic conditions is beyond doubt. What is less certain is whether Sellers is correct in labeling it anti-capitalist. It is certainly true that Jacksonian economic writers trucked in exactly the kind of “class war” rhetoric to which Schlesinger referred. At the same time, however, the claim that this tendency suggests a desire to do away with markets in favor of some pre-industrial utopia seems unfounded. If there is any theoretical coherence to Jacksonian economic thought, it lies not in opposition to capitalism, but in the notion of the separation between government and commerce. This position, truly a theory of democratic capitalism, is the common thread that renders intelligible the various Jacksonian positions on political economy.

Theophilus Fisk, for example, was a labor leader and Jacksonian radical, one to whom Schlesinger refers as an anticapitalist.<sup>243</sup> True to form, Fisk declared in his 1837 oration “Labor the Only True Source of Wealth,” that “an unequal distribution of wealth is at the very foundation of vice and immorality.” The wealth of some, he declaimed, is not possible without the impoverishment of many. Moreover, excessive riches are bad for society as a whole. “The more there are of great fortunes, the more there are who are idle and pay for no labor but for their pleasure, and the more riches tend to decay, and population to diminish. Wherever you see exaggerated fortunes, you there see there the greatest misery and the greatest stagnation of industry.”<sup>244</sup>

One might expect this sort of diatribe from a leveler or a socialist, but Fisk was nothing of the sort. In fact, he placed great stock in the value to society and the

individual of the pecuniary gains to be made from work. His opposition is not to inequality *per se*, but only to the form of it that arises from actions of government.

It is artificial inequality alone that I oppose, created by partial legislation, by monopolies and exclusive privileges—it is the granting of exclusive favors by the legislature to a privileged nobility of growing rich without industry; enabling one man to own an hundred houses, while ninety-nine men own no house at all; it is this I oppose. There are inequalities enough in nature, without the legislatures widening and deepening the gulf between the different classes of society.<sup>245</sup>

In fact, Fisk criticizes a legislated equality every bit as much as the great wealth he is discussing. Any scenario in which the government is the engine by which these economic distinctions are made will bring about a waste of human energy and an attendant misery; were the legislature to make everyone equal, then people would set about trying to disrupt the equality by getting a larger share for themselves. Fisk is in no way opposed to gains that one might acquire through personal initiative.

Society should have for its basis the free disposition of the faculties of every individual, and the sure guarantee of whatever he may acquire by their means; then he is encouraged to labor. One cultivates the earth—another builds a house—a third engages in manufactures—a fourth is a merchant, and so on; the most skilful [sic] gain, the most economical amass, and at their decease it descends to their kindred.<sup>246</sup>

Jacksonianism, then, did not disavow the Liberal idea of private property, nor the Lockean notion that a person only deserves those things that he or she earned through labor. Elsewhere Fisk even rejects the notion that the rich have a duty to the poor to “give them bread.” He believes this act does the less fortunate a disservice because “it is better that they should earn it.”<sup>247</sup>

Though the Jacksonians did in fact generally embrace the market as an efficient instrument for the distribution of goods, to make this claim is not to say that they actively supported capitalism. The agnosticism of the Jacksonian position about economic issues

meant that many different ideas about the relative justice of strictly economic issues could be tolerated under a “big tent” philosophy. Many Jacksonians did subscribe, however, to the labor theory of value, which holds that the true economic worth of a given commodity is equal to the aggregate amount of labor required to manufacture it. “All the means of enjoyment and all the accumulation of wealth,” declared Fisk, “are the products of human labor.” The doctrine is difficult to square with the observation that a primary variable in the determination of value is the demand for the product of potential consumers, who are unlikely to have any concern for how many hours of labor were required to make it. As such, it has very few adherents today.

Nonetheless, its widespread acceptance among the Jacksonians meant that a significant component of their analysis of society’s ills was a hatred they inherited from their republican forbearers. The particular object of their moral revulsion was the figure of the speculator, who contributes no work to a project, yet is allowed to earn money from it. Fisk, again, expressed his disgust. “I am very suspicious of the moral honesty that guides the transactions of the MONEY MARKET; of men who grow wealth *not by producing wealth*, but by shuffling the cards.”<sup>248</sup> As a result, Jacksonians had no patience for the institution of banking, whose *raison d’être* was, in their eyes, the illegitimate pursuit of speculative gain. Consequently, were the Jacksonians to imagine the worst possible transgression of their values, it would be an establishment that combined the wanton wastefulness and illegitimacy of banking with the “artificial inequality” fostered by government economic intervention. Such an institution was the Second Bank of the United States, the Jacksonian *bête noire*.

The hatred of banks was at the center of the Jacksonian philosophy, and could show up just about anywhere. One might consider in this regard Orestes Brownson’s influential, if scandalous, article “The Laboring Classes.” Brownson, like Fisk a

Jacksonian radical, religious figure and labor leader, published this screed in *The Boston Quarterly Review* in 1840, whereupon it was greeted with howls of protest. The essay found Brownson firmly establishing his Jacksonian credentials by presenting the view of the disjunct between honest work and ill-gotten wealth. “No one can observe the signs of the times with much care, without perceiving that a crisis as to the relation of wealth and labor is approaching.”<sup>249</sup> At the same time, however, he specifically disavows the labor theory of value.

Now we will not so belie our acquaintance with political economy, as to allege that these alone perform all that is necessary to the production of wealth. We are not ignorant off the fact, that the merchant, who is literally the common carrier and exchange dealer, performs a useful service, and is therefore entitled to a portion of the proceeds of labor.

Putting aside the difficult question of how the merchant would be paid in a non-capitalist economy, his disavowal of the labor theory of value also casts doubt on the assertion that Brownson opposes capitalism itself. Nonetheless, he gives no quarter in supporting labor against its enemies. “But make all necessary deductions on his account, and...this fact stares us in the face, the workingman is poor and depressed, while a large portion of the non-workingmen, in the sense we now use the term, are wealthy.”<sup>250</sup> Indeed, one of the more provocative parts of the article is when he favorably compared slavery with wage-labor. “The laborer at wages has all the disadvantages of freedom and none of its blessings, while the slave, if denied the blessings, is freed from the disadvantages.”<sup>251</sup>

Brownson did not deny that individuals can alter their own socioeconomic position, but instead argued that any evidence of this phenomenon can prove very little. Not only are examples of it few and far between, but the remuneration of wage labor alone is insufficient as a device for upward mobility. “[O]ne fact is certain, no man born poor has ever by his wages, as a simple operative, risen to the class of the wealthy. Rich

he may have become, but it has not been by his own manual labor. He has in some way contrived to tax for his benefit the labor of others.”<sup>252</sup>

But when articulating the source of this injustice, Brownson took a strange turn. Struggling with his own religious faith at the time, he placed the blame for the ills of humankind squarely at the doorstep of religious leaders. “For our part we are disposed to seek the cause of the inequality of conditions of which we speak, in religion, and to charge it to the priesthood.”<sup>253</sup> Much of the essay is devoted to his point, which was among the several causes of its outraged reception.

Yet despite its seeming devotion to other themes, Brownson’s essay, somewhat amazingly, concludes by referring to the evils of banks. “The first act of government we want, is a still further limitation of itself. It must begin by circumscribing within narrower limits its powers. And then it must proceed to repeal all laws which bear against the laboring classes, and then to enact such laws as are necessary to enable them to maintain their equality.”<sup>254</sup> After addressing what he perceives to be the root of all evil, Brownson did not claim that the solution to these problems comes with banning the clergy or doing away with capitalism. Instead, he voiced the comparatively modest program characteristic of the Jacksonians: bank reform.

But again what legislation do we want so far as this country is concerned? We want first the legislation which shall free the government, whether State or Federal, from the control of the Banks...Such is the subtle influence of credit, and such the power of capital, that a banking system like ours, if sustained, necessarily and inevitably becomes the real and efficient government of the country.<sup>255</sup>

Again, Brownson’s objection struck the note of divorce. His objection to banks stemmed from their perceived potential to corrupt the government, not the mere fact of their existence. Though this characteristic Jacksonian position could hardly be called “entrepreneurial,” it is also a far cry from “anti-capitalist.”

The Jacksonian project was rooted in the attempt to reconcile the commitment to popular democracy with the adjustment to the market forces that were challenging the norms of American cultural life. Yet that fact alone does not justify the claim that anti-capitalism was a central tenet of Jacksonian ideology. Instead, Jacksonians were more interested in preserving the newfound economic freedom of the market while simultaneously maintaining a steadfast republican commitment to the elimination of corruption from government. In their minds, the line between neutral government intervention in the economy and special favoritism did not exist, and so their solution to most economic problems consisted of separating the government from private interests. Yet to argue that government should not support private interests, as the Jacksonians incessantly did, is not to declare these interests are themselves illegitimate. Their prevalence, however, did mean that the government must be eternally vigilant in policing itself against any inclination to support them. And one glaring example, the Second Bank of the United States, suggested to them that it had not done so.

### **HARD MONEY**

At the end of *The Age of Jackson* is a lonely two-and-a-quarter-page appendix, one whose importance is so great that Schlesinger might have better aided his readers by placing it at the beginning of the book. What this appendix does is clear up a central ambiguity in the meaning of the term “bank.” For modern readers, a bank is an institution charged with the secure storage of the client’s money. Its incentive to provide this service comes less from the fees that its customers pay, which are generally insignificant, than from the fact that the institution can pool the deposited funds and invest them, by making loans or purchasing financial instruments, in order to make money. But during the Jacksonian period, points out Schlesinger, “[n]ote issue was regarded as the characteristic function of banks, and an attack on the ‘banking system’ or

on ‘banks’ meant generally an attack on the power of private note issue. It did not mean the elimination of the functions of discount\* or deposit.”<sup>256</sup>

But this explanation might only exchange one set of confusions for another, for “private notes” issued by banks are no longer in use, and they admit of no modern analogue. What may seem difficult for many contemporary audiences to understand is that during this period the Federal government was not circulating any currency: it did not print dollar bills or mint any coins.<sup>†</sup> Thus when individuals or businesses wished to conduct a financial transaction, the only obvious or standard medium of exchange available was that of precious metals. Gold and silver have a tendency to retain their value even during financial upheavals, and so, all other things being equal, most people preferred to transact in those media. But metals are bulky and cumbersome, and therefore impractical for highly-denominated exchanges or purchases made at a distance. But the biggest problem with gold and silver was that there simply was not enough of it to meet the many financial needs of the nation. To work around these problems, private banks issued notes that could be redeemable at that particular place of business for the amount of precious metals—referred to as “specie”—that corresponded to the value denominated in the note. Moreover, what made a note different from a “draft” (what we would today call a check) was that it was not specifically made out or addressed to anyone. If one person gave to another a note issued by a given bank, the second person could return to that bank and redeem it for specie.

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\* “Discount” refers to then-common form of loan repayment in which the interest is deducted from the principal on payment of the original loan. The borrower is then responsible for repaying the original principal rather than, as is more common today, the principal plus interest. The “discount function” of a bank thus refers merely to its capacity to loan money.

† The first national currency was the United States Note—the famous “greenback” that would cause so much trouble—authorized by the Legal Tender Act of 1862.



In the nineteenth century, these circulating notes came to perform the same function that government-issued currency does today.\* Yet notes issued by private banks caused many problems. Since the various notes were, in fact, separate financial instruments, they were not interchangeable goods and a financial market sprung up for each bank's note. Thus there was no guarantee, and in fact little likelihood, that a note from one bank could buy the same value of goods as an equally-denominated one from a different bank. This phenomenon had a regional component, as well. In the West, where there was little specie, the need for a medium of exchange prompted banks to issue too many notes, which caused inflation. Thus notes from Western banks were often simply worth less than those issued in the East. Additionally, the banking business model required these institutions to circulate more value in notes than they had in specie. The phenomenon of too many people redeeming their notes at the wrong time could cause a "panic," in which the bank could not meet its obligations to redeem its notes in specie. More often than not, such a run on the bank ended only when the financial institution failed and went out of business; in that event, everyone involved would lose everything. Moreover, the financial industry invited outright dishonesty in the form of the "wildcat" bank, particularly common in the Western states and territories. Under this scenario, a con artist would arrive in town and set up a new bank, accepting specie on deposit. After issuing a series of notes, he would then disappear with the gold and silver, leaving his former customers holding the now-worthless paper.

Jackson and his followers believed that these circumstances were unacceptable, and the central tenet of their ideology was therefore a commitment to "hard money." The unifying concept behind this nexus of positions is described by Schlesinger as "the exclusion of banks from control over the currency...It proposed merely to limit bank

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\* In fact, a modern dollar bill actually *is* a note, issued by the Federal Reserve.

paper to commercial transactions, and to define banks to the functions of deposit and discount, slowly withdrawing from them the privilege of note issue.”<sup>257</sup> Jacksonians, quite simply, did not want the government to do anything that would encourage the issuing of notes. Thus they supported a restriction on government acceptance of notes in payment of monies it is owed, and a policy forbidding banks from issuing notes of smaller denominations.

But for our purposes, the most important question is that of *why* they opposed bank notes. Since hard money was primarily an economic platform, what was its relationship to Jacksonian democracy? Jackson saw an intimate relationship between the two, one based upon his republican concerns regarding corruption in government, as he spelled out this argument in his Farewell Address. Noting that it had been almost fifty years since the Constitution had been adopted, he found that nothing in all that period “has produced such deep-seated evil as the course of legislation in relation to the currency.” Though the Constitution “unquestionably intended” that citizens utilize “a circulating medium of gold and silver,” Congress nonetheless established a national bank, “with the privilege of issuing paper money receivable in the payment of the public dues.” This course of events unfortunately “drove from general circulation the constitutional currency and substituted one of paper in its place.”<sup>258</sup>

The pernicious effects of paper money, he continued, all stem from the tendency toward fluctuation in its value. In good times, when risks seem minimal, banks succumb to the temptation “to extend their issues of paper beyond the bounds of discretion and the reasonable demands of business.” Eventually, the public learns that the notes are not well-supported and begins to redeem its notes; the suddenly nervous banks then “immediately withdraw the credits they have given, suddenly curtail their issues, and produce an unexpected and ruinous contraction of the circulating medium, which is felt

by the whole community.” Though this ceaseless cycle is bad enough, Jackson had an even deeper, moral concern that the wild fluctuations in value encourage speculation in the various notes. The culture that results from the prevalence of such pursuits saps the moral strength of the nation itself, and “it is not by encouraging this spirit that we shall best preserve public virtue and promote the true interests of our country.” The existence of paper currency will “foster this eager desire to amass wealth without labor,” and the ensuing corruption, once penetrating the “public councils” will “destroy at no distant day the purity of your Government.”<sup>259</sup> [sic]

Thus Jackson was not exaggerating when he claimed to believe that currency policy is the most significant issue that the nation has faced. He viewed the country’s actual fate as dependent upon it. But if it is the profit-seeking nature of banks that rendered them such dangerous vehicles for issuing and circulating currency, then the obvious solution would appear to be placing this responsibility in the hands of the Federal government. This function had been one of the intended purposes of the Second Bank of the United States.

In 1811, a Republican Congress had narrowly voted against renewing the charter of the Bank of the United States, out of hostility to this remnant of Hamilton’s Federalism. Without the Bank, the ensuing period was characterized by the weakening of the structure of the nation’s banking system. The number of state-chartered banks almost tripled and total quantity of bank notes doubled, while the amount of specie in the nation’s vaults actually declined.<sup>260</sup> The gross military and financial mismanagement of the War of 1812, however, combined with the omnipresent opportunities for profiteering in wartime to create a climate of reckless financial speculation that culminated in a bank run in 1814. Two years later, Congress and President James Madison, setting aside whatever republican scruples they might have had, chartered a new bank. Only five years

after Hamilton's bank had closed, the Federal government chartered the Second Bank of the United States.

Like its predecessor, the Second Bank of the United States did not carry that name because it was in any significant way a Federal entity. While the United States did own one-fifth of the bank's shares, and the President was empowered to appoint five of its 25 directors, what made the bank particularly "national" was only the fact that it was chartered by the Federal government, rather than one of the states.\* Yet its governmental affiliation and sheer size—it was capitalized at \$35 million in order to serve a national economy that circulated around \$70 million of legal tender—were to give the Bank a disproportionate effect on the money supply, one which many believed would allow it to play a significant role in stabilizing the economy when necessary. In the year before the Bank was chartered, for example, Treasury Secretary Andrew Dallas wrote to John C. Calhoun that "it is not an institution created for the purposes of commerce and profit alone, but more for the purposes of national policy, as an auxiliary in the exercise in some of the highest powers of government."<sup>261</sup> Yet Andrew Jackson, despite his clear-cut antagonism toward the system of private note circulation, hated the Second Bank of the United States. The fight against what the Jacksonians called the "monster bank" would become the signature issue of his administration, culminating with a presidential veto of its charter in 1832. Four years later, in his final act as the president of the United States, Jackson would still be preaching of its many evils.

Though private banks exert far too much influence on the currency, Jackson argued, one brake on the system of concentrated power is the fact that no one bank is particularly large relative to the other ones. As such, the fact of their competition limits

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\* Thus Jackson did not technically "kill" the bank, but only denied it a Federal charter. Even after the veto, it would struggle on for a few years with a charter from Pennsylvania.

the amount of power that any one bank can exert over the political system. Though the private bank system does great injury to “the habits of business, the pecuniary concerns, and the moral tone of society,” the inability of the banks to combine necessitates that “their power of mischief...be confined to a narrow space and felt only in their immediate neighborhoods.”

The national bank, however, changed all that, and Jackson’s description of its machinations can only be described as dystopian. The Bank had been able to “exercise despotic sway over the other banks” who became its “obedient instruments.” At the same time, the “numerous class of persons...who depend altogether on bank credits for their solvency” were necessarily bound “to propitiate the favor of the money power by distinguished zeal and devotion in its service.” The untrammelled power of this colossus was such that it could “bring forward upon any occasion its entire and undivided strength to support or defeat any measure of the Government.” [sic] Finally, its complete command of the currency in circulation ultimately gave it “the power to regulate the value of property and the fruits of labor in every quarter of the Union, and to bestow prosperity or bring ruin upon any city or section of the country as might best comport with its own interest or policy.”<sup>262</sup> In short, the Second Bank of the United States had been killed not a moment too soon, as its very existence portended nothing less than the imminent demise of the republic.

Historians diverge in their assessments of Jackson’s impression of the economic performance of the Second Bank of the United States; many agree with Bray Hammond that it was a minor force for stability in an era of relatively primitive economic understanding.<sup>263</sup> Whether the Jacksonians were correct in their concern over the Bank’s performance and potential is a question that is both beyond the scope of this dissertation and irrelevant to the question at hand. What is important is how the commitment of the

Jacksonians to their own conception of democratic capitalism is reflected in their rejection of the Second Bank of the United States.

On July 10, 1832, Andrew Jackson vetoed the Congressional renewal of the charter of the Second Bank of the United States. The message that accompanied the return of the bill to the Senate, at seven thousand words the longest up to that time, reflected a deep passion about the issue. While not everyone would agree with the strong opinion of historian Ralph C.H. Catterall, who asserted of Jackson's statement that "its economic reasoning is in the main beneath contempt,"<sup>264</sup> one might safely say that the message is not characterized by a thoughtful or nuanced approach to the issue. One of the president's major contentions was that a great number of the shares in the Second Bank of the United States were owned by foreigners, and his concerns on this point approach the hysterical.

Should the stock of the bank principally pass into the hands of the subjects of a foreign country, and we should unfortunately become involved in a war with that country, what would be our condition? Of the course which would be pursued by a bank almost wholly owned by the subjects of a foreign power, and managed by those whose interest, if not affections, would run in the same direction there can be no doubt. All its operations within would be in aid of the hostile fleets and armies without. Controlling our currency, receiving our public moneys, and holding thousands of our citizens in dependence, it would be more formidable and dangerous than the naval and military power of the enemy.<sup>265</sup>

Jackson's other major argument against the Bank was Constitutional, and here he revisited the "necessary and proper" clause that had so occupied Hamilton, Jefferson and Madison during the process of chartering the first Bank. Conceding that the Federal government has the power to create a bank, Jackson quibbled with the necessity of so many of the specific powers granted under its particular charter that any real-life bank guided by these restrictions would seem practically impossible. Practices that did not meet the high bar of Jackson's Constitutional test include the charter's grant of

monopoly, the ability of the Bank to have branches throughout the country, the construction of buildings to house these branches, the amount at which the bank is capitalized and the selling of stock to foreigners.<sup>266</sup>

The bulk of the veto message appears to be something akin to political grandstanding, calculated to whip into a frenzy the president's supporters around the country. Thus its most frequently cited passage, in which the president articulated the noble principles upon which his objections are based, offers a terribly distorted sense of the overall content of the speech. Nonetheless, at the end of this long, polemical diatribe is tucked the following paragraph, one that is terribly revealing of the overall Jacksonian philosophy.

It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes. Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth can not be produced by human institutions. In the full enjoyment of the gifts of heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages artificial distinction, to grant titles, gratuities, and exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics, and laborers—who have neither the time nor the means of securing like favors to themselves have a right to complain of the injustice of the Government. There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing. In the act before me there seems to be a wide and unnecessary departure from these just principles.<sup>267</sup>

The passage illustrates two important points about Jackson and Jacksonianism. The first is that Jackson was no enemy of the nation's burgeoning capitalism: coming at an arguably demagogic moment, the statements denying equality as a viable political goal make clear that Jackson expected little disagreement with them. Moreover, Jackson's objections to the Second Bank of the United States fit entirely within a framework of at

least philosophically supporting industry and even finance. Thus the second point is, again, that the thread that runs through the various Jacksonian positions: the stance against hierarchy and aristocracy, the commitment to popular rule, the acceptance of the market and, of course, the slew of hard money positions, was the notion of “divorce.” The economy is a purely private affair, and whatever accolades or wealth that people can acquire there is their own business. What is illegitimate are those policies in which government acts in a manner that is not neutral between parties, as distinctions acquired in this fashion are conferred rather than earned. Yet there is no way for the state to pursue economic goals that are neutral between citizens; therefore, it has a positive duty to refuse to enter the economic arena at all. Thus the Jacksonian program could reconcile an older Jeffersonian republicanism, which would restrict the size of government on the grounds of possible corruption and tyranny, with the new commitment to populist democracy, which urges small government in order to promote egalitarianism.

The Jacksonians would discover that this philosophy is much easier to espouse than it is to practice. In the first place, the democratic mandate can conflict with the republican one if the people actually want the government to get more involved with the economy. Secondly, it is not obvious that the best way to ensure fair and equal economic treatment of citizens is for the government to refuse to deal with them at all. Yet these issues would largely escape Jackson’s notice, along with any negative repercussions of the Bank veto. Instead, they would fall on the head of his protégé and successor, Martin Van Buren, who would have deal with the subsequent economic hard times.

#### **THE INDEPENDENT TREASURY ACT**

Though Jackson’s veto was upheld in Congress, the “bank war” did not end with that action. The veto itself had been a result a mistaken belief on the part of Nicholas Biddle, who headed the Second Bank. Under the assumption that public opinion



supported the Bank, he asked his allies in Congress to introduce the bill renewing the Bank's charter nearly four years before the old charter would expire. He believed that the president would be unwilling to oppose the measure, knowing that Jackson would soon have to run for re-election. But Jackson, a much better gauge of the popular will, was delighted to run as the man who had defended the "humble members of society" against the "monster bank." As a result the United States was left with a "lame duck" national bank for several years.

At the same time, Jackson had to figure out where to put the Federal money, which at the moment was stored in Biddle's Philadelphia vaults. A little over a year after the veto, he made his decision. Jackson ordered that the nation's specie be removed from the Second Bank of the United States and, effective October 1, 1833, deposited in a series of designated state-chartered banks around the country. In response, Biddle called in loans and began redeeming local bank notes at a much greater rate, in hopes of inducing a currency contraction that might prompt a greater popular appreciation and understanding of the bank's value. In the Senate, Henry Clay proposed two motions, eventually successful, to censure Jackson for removing the deposits.\* As banks failed around the country, citizens pressured Congress and the administration for relief, which only seemed to strengthen Jackson's resolve. "The bank, Mr. Van Buren, is trying to kill me," he told his vice-president. "*But I will kill it!*"<sup>268</sup>

In fact, he did. By 1834, the power of Nicholas Biddle and the Second Bank of the United States had been broken. The economic hard times proved to be difficult but temporary, and the American people subsequently blamed Biddle rather than Jackson for the economic upheavals, as evidenced by the Democratic sweep in the midterms that

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\* Jackson protested this action, and the Senate refused to enter his note to that effect into its journal. A few years later, Jackson's reliable ally Senator Thomas Hart Benton of Missouri succeeded in passing a motion to expunge the censure from the Senate record.

year. Nonetheless, the local deposit bank system was not working exactly the way that Jackson had planned. Though referred to disparagingly by Jackson's opponents as "pet banks," these institutions were profit-seeking institutions and not political organs. As such, they were happy to get specie from the government without the requirements that had formerly accompanied it. "Freed from the restraints Biddle's bank had imposed," wrote Brands, "the state banks issued notes by the basketful."<sup>269</sup> Beginning now to look at the end of his presidency, Jackson enacted a series of smaller reforms in an attempt to impose the hard money policy on the deposit banks.

Two of these policies were of particular importance, but the first was not Jacksonian at all. The Deposit Bill was an initiative sponsored by the opposition Whig party. It required each state have at least one deposit bank, and designated a greater number of such institutions in a naked attempt to acquire pet banks for the Whigs. Overnight the number of deposit banks would nearly triple. Furthermore, the bill mandated a lower ratio of specie on hand to issued notes than was in effect in many states, which would allow the banks to circulate more notes while holding the same amount of precious metals. Additionally, the bill forbade banks from holding more than three-fourths of their reserves in the form of government deposits. In effect, it mandated that the government remove specie from a smaller number of banks with conservative note-issuing policies and divide it among a larger, less manageable group of banks with expansionist tendencies. Finally, the recent retirement of the Federal debt—an achievement of which Jackson was very proud—had combined with other economic developments to leave a bit of "extra" money in the Federal accounts. The Deposit Bill would mandate that this money be distributed to the states in four payments of approximately \$9 million. Its purpose was frankly and obviously to expand currency circulation.

Once Congress passed and submitted the Deposit Bill, Jackson's first impulse was to veto it. But he believed the action would be unpopular with voters, who might see him as favoring the pet banks as a form of patronage. Moreover, Jackson feared for the political future of Van Buren, who would be heading the Democratic ticket in 1836 and would not want to be saddled with such unpopular legislation. With the president's signature, the bill passed into law, but the Deposit Act would backfire for its supporters. In compliance with the law's provisions, millions of dollars left New York banks, which were already reeling from an unrelated tightening of credit from England. While in transit, this money was not available to its destination banks, which might have used it to ease the strains of contraction. Its unintended effect was to reduce the money supply overall, and to move much of the nation's specie to places where it could do little good.

Another important contractionary action was Jackson's issue of the so-called "Specie Circular." In an effort to combat both the speculation in Federal land and the consequent accumulation of nearly worthless paper in Federal accounts, Jackson directed his Secretary of the Treasury, Levi Woodbury, to accept only specie for the sale of Federal land. This policy was intended to contract the money supply and did so. Jackson had thought that it might combat the presumed expansionary effects of the Deposit Act, but the unforeseen contraction that the law had wrought meant that the government, in effect, was putting its weight behind a set of policies that would bring about an unprecedented monetary contraction. When combined with the English credit squeeze, the cumulative effect was unbearable for many financial actors. On May 10, 1837, several New York banks stopped making specie payments. That is, they no longer had gold or silver to give to those who wished to redeem their notes. Such suspension is the death-knell of a bank, and within a few days, only six of the nation's eight hundred banks

would still be making payments.<sup>270</sup> The ensuing national economic collapse, the worst the nation had ever seen, would define the presidency of Martin Van Buren.

Van Buren had been in office about two months when the Panic of 1837 began. Within five days of the initial bank failures, public pressure had forced the president to call for a special session of Congress to meet in September, some four month's hence. In the meantime, Van Buren ordered Woodbury to remove government deposits from any private banks that had discontinued specie payments. The president's speech, delivered by his son Abraham, inaugurated the September 4 "Panic Session," as it became known. In it, Van Buren assessed the various options for dealing with the crisis, and declared, in true Jacksonian fashion, that the solution lie in separating completely the functions of government from those of private banks. The practical policy manifestation of this claim was that Van Buren called for all Federal money to be removed entirely from such institutions.

Van Buren's address began by delineating the particular nature of the crisis at hand, and the tasks with which Congress is now charged.

They are, to regulate by law the safe-keeping, transfer, and disbursement of the public moneys; to designate the funds to be received and paid by the government; to enable the Treasury to meet promptly every demand upon it; to prescribe the terms of indulgence and the mode of settlement to be adopted, as well as collecting from individuals the revenue that has accrued as in withdrawing it from former depositories; and to devise and adopt such further measures, within the constitutional competency of Congress, as will be best calculated to revive the enterprise and to promote the prosperity of the country.<sup>271</sup>

Thus, the president implied none-too-subtly, one who sees any greater responsibility for the government of the United States is not only mistaken, but is essentially violating the ideals of the Constitution. Many of the more ambitious tasks that some would like to see

the government undertake are outside of its purview and a threat to liberty. What is needed is not greater Federal intervention in the economy, but less. The exigencies of the day, he argued, present three options: keeping Federal money in the state-chartered banks, bringing back the national bank, or eliminating the governmental need for private banks entirely. Though each of the first two options, Van Buren admitted, have their supporters, “it is apparent that the events of the last few months have greatly augmented the desire, long existing among the people of the United States, to separate the fiscal operations of the Government from those of individuals or corporations.”<sup>272</sup>

Taking the options in turn, the president began by presenting his arguments against a national bank. Relying on the failure of the two previous ones, he confidently claimed that the people simply do not want such an institution. “Again to create a national bank as a fiscal agent would be to disregard the popular will, twice solemnly and unequivocally expressed.”<sup>273</sup> Though he would return to this point several times throughout the speech, his case for divorce was not merely political in the narrower partisan sense of the term, but also ideological. Not only would a national bank have failed to prevent the Panic of 1837, argued Van Buren, but whatever benefits that it can successfully provide are illegitimate: such advantages can come only from using the power of government to enrich some specific group of citizens. For example, the current “derangement alleged at present to exist in the domestic exchanges of the county” presents no obligation to the government.

This accommodation is now, indeed, after the lapse of not many years, demanded from it as among its first duties, and an omission to aid and regulate commercial exchange is treated as a ground of loud and serious complaint. Such results only serve to exemplify the constant desire among some of our citizens to enlarge the powers of the Government [sic] and extend its control to subjects with which it should not interfere.<sup>274</sup>

Arguing that the Federal government “was not designed by the Constitution” to “assume the management of domestic or foreign exchange,” Van Buren was essentially taking a position unimaginable today. He was arguing on Constitutional grounds that the nation’s economic suffering was not a concern of the Federal government. While perhaps laudable on principle, as an ideal it seems unworkable in a democratic polity, as the ones doing the suffering are the same ones who elect the political leaders.

But Van Buren based his argument on what he perceived as a deeper moral truth: that commercial enterprise has no claim on the attention of the government.

[I]t is not its province to aid individuals in the transfer of their funds otherwise than through the facilities afforded by the Post Office Department. As justly might it be called on to provide for the transportation of their merchandise. [sic] These are operations of trade. They ought to be conducted by those who are interested in them in the same manner that the incidental difficulties of other pursuits are encountered by other classes of citizens.<sup>275</sup>

Thus Van Buren expresses his hostility to a National Bank in much the same way that Jackson did in his veto message: by asserting a much broader principle in order to justify that opposition. That Jacksonian premise contains two interrelated assertions: that the government is unauthorized to assume the kind of power that a national bank represents, and that to assert such power would be unjust, as it would inevitably favor some economic actors over others. Not only is such discrimination unfair on its face, but in the particular instance of legislation relating to commerce, it would nearly always work to the advantage of the well-off against those “humble members of society.”

State banks, on the other hand, also fail to meet the nation’s purposes, and Van Buren suggested that their mismanagement was a substantial cause of the Panic. Though such banks had performed quite well in good times, “when it became necessary, under the act of June, 1836 [the Deposit Act], to withdraw from them the public money...they

found it in many cases inconvenient to comply with the demands of the Treasury.” The maintenance of these government requirements “increased the general distress and contributed, with other causes, to hasten the revulsion in which at length they, in common with the other banks, were fatally involved.”<sup>276</sup> The president concluded therefore that the state banking system is inadequate to the financial needs of the Federal government.

Having therefore considered and rejected the only two available options, Van Buren appeared to be without a solution. But he rejected this conclusion, arguing instead that the apparent choice between the use of a nationally-chartered bank and several state-chartered institutions is a false one. Both options, he declared, operate under an assumed premise, one that he would reject: that it is necessary or advisable that government involve itself in with private banking. The mere act of acknowledging this presumption, in Van Buren’s rhetorical hands, was tantamount to rejecting it. “Under these circumstances it becomes our solemn duty to inquire whether there are not in any connection between the Government and banks of issue evils of great magnitude, inherent in its very nature and against which no precautions can effectually guard.”<sup>277</sup>

Of course, Van Buren meant to suggest that such an inquiry would yield the conclusion that the Federal government has no business involving itself with private financial enterprises. The reasons for this rejection of standard practice, one he claims to have evolved more as “a measure of emergency than of sound policy,”<sup>278</sup> are twofold: in one direction, the vagaries of financial markets can impede the government’s ability to perform its core functions, while in the other, the opportunities for gain presented by banks could compromise the motivations and actions of Federal officials.

The Panic of 1837 had clearly demonstrated that a dependence upon private financial institutions can render impotent a government suddenly deprived of its funds. “A sudden act of the banks intrusted [sic] with the funds of the people deprives the

Treasury, without fault or agency of the Government, of the ability to pay its creditors in the currency they have by law a right to demand.” Yet the potential consequences of such upheavals can inflict even greater damage; to prove this point, Van Buren, as Jackson had done in the Bank veto message, asked the members of Congress to imagine the harm such a crisis could have inflicted had the nation been involved in a war. In invoking such a scenario, Van Buren was arguing that the level of importance of governmental functions, including even seemingly mundane ones such as those involving finance, is far too great to be entrusted to anyone other than the government itself. In converting “the money raised for and necessary to the public service...into a mere right of action against corporations intrusted [sic] with the possession of them,”<sup>279</sup> the Federal government gives away the means toward performing its public duties. While the executive branch could conceivably exercise managerial control to such a degree that banks would become unable to violate the people’s trust, such control would give rise to numerous justifiable objections of inappropriate government intervention into private business.

Van Buren’s first set of objections concerned banks hampering the government’s ability to perform its functions, but risks also run in the other direction: government officials could interfere with financial markets. Though the purpose of keeping Federal money in these banks is to enable the government to better serve the people, “its effect may be to introduce into the operations of the Government influences the most subtle, founded on interests the most selfish.” The people’s money, rather than being used for the projects that the citizens have prioritized through their elected representatives, instead serves as “a fund on which discounts are made for the profit of those who happen to be owners of stock in the banks selected as depositories.”<sup>280</sup> Though presented in the form



of another rhetorical question, Van Buren's commitment to bank divorce had by this point in the address become clear.

Since, therefore, experience has shown that to lend the public money to the local banks is hazardous to the operations of the Government, at least of doubtful benefit to the institutions themselves, and productive of disastrous derangement in the business and currency of the country, is it the part of wisdom again to renew the connection?<sup>281</sup>

The fear that the power of government can be used to the benefit of some specific group comprised a strong concern of Jacksonianism, as we have seen. Though certainly other American ideologies have shared this particular anxiety, what is uniquely constitutive of the Jacksonian worldview is the belief that the only way to prevent this from happening is to completely separate the public from the private sector. The conclusion to Van Buren's speech made clear that this premise is the one that underwrites his request for bank divorce. After declaring that he does not expect Congress to resume deposits to banks that are not making specie payments and that the states will not receive the final payment due them, he summarized his program with a philosophical flourish.

Those who look to the action of this Government [sic] for specific aid to the citizen to relieve embarrassments arising from losses by revulsions in commerce and credit lose sight of the ends for which it was created and the powers with which it is clothed...It was not intended to confer special favors on individuals or on any classes of them, to create systems of agriculture, manufacturers, or trade, or to engage in them either separately or in connection with individual citizens or organized associations. If its operations were to be directed for the benefit of any one class, equivalent favors must in justice be extended to the rest, and the attempt to bestow such favors with an equal hand, or even to select those who should most deserve them, would never be successful.<sup>282</sup>

His reading of U.S. history offered similar lessons. The "framers of our excellent Constitution...wisely judged that the less government interferes with private pursuits the better for the general prosperity." Divorce represents the fullest articulation of this principle, one from which the nation had obviously strayed. "It is not [government's]

legitimate object to make men rich or to repair by direct grants of money or legislation in favor of particular pursuits losses not incurred in the public service. This would be substantially to use the property of some for the benefit of others.”<sup>283</sup>

Van Buren’s articulation of the reasons for bank divorce clearly demonstrate an application of Jacksonian principles. The idea here is that true democracy, represented by his invocation of the Constitution, can be fulfilled only when the Federal government takes no action that could benefit one group over another. As such it suggests a theory of democratic capitalism whose difficulties were discussed in Chapter One: that capitalism and democracy can fully express their natures only by remaining completely separate. The workings of the market cannot be allowed to corrupt the ability of the people to express their democratically-determined wishes, nor can government intervention restrict the ability of free economic actors to express *their* preferences through the market mechanism. During the Jacksonian period, the dominant political force adhered strongly to this ideology and tried to put it into place, as clearly represented by Van Buren’s insistence on divorce.

A little over a week later, on September 14, Silas Wright, Democrat of New York, introduced an Independent Treasury Bill into the Senate. The next month, the bill would narrowly pass the Senate before its being tabled in the House as the special session ended. In June of the next year, the House would debate its own version of a divorce bill before defeating it on June 25 by a margin of 125-111.

In each of his next three State of the Union addresses, Van Buren would restate the need for his divorce bill. (Since the proposal also called for the establishment of a network of Federal depositories around the country, run by the Treasury Department, it was often referred to as the “sub-treasury bill.”) The arguments that he gave for these policies never varied significantly from the one he presented in the Panic Session.

Congress had given Van Buren's bill a chance, however, and it had failed. In spending so much political capital on his idea, Van Buren unwittingly showcased the limits beyond which the American people were not willing to accept the Jacksonian philosophy. The bill would eventually become law, but not because of Van Buren's steadfastness. Instead, the political and economic situation of the country altered significantly around the independent treasury issue, allowing the president another chance to press for his proposal.

Few banks had resumed paying specie, and under those conditions the Federal government refused to deposit its funds. Thus the country was gaining some experience with a *de facto* divorce of government and private finance, even if not the *de jure* one desired by Van Buren. Then on October 9, 1839, under strain of the economic conditions, Biddle's Pennsylvania-chartered bank ceased paying specie, and soon many other banks followed. The resulting economic downturn was unlike any that the nation had seen to that point. Commodity prices plummeted: in one example, cotton fell from an 1839 price at New Orleans of 12.4 cents per pound to 5.7 cents by 1843. In the same period, U.S. imports dropped from \$159 million to \$43 million; by 1842, nine states had defaulted on interest payments on loans they had taken out for internal improvements.<sup>284</sup> The collapse of these banks revived interest and political possibilities for Van Buren's original divorce idea.

On January 23 of 1840, the bill won in the Senate on a 24-18 vote. Two months later, it was re-introduced in the House, and the controversial proposal was debated there at length. One Congressman, Charles G. Atherton, Democrat of New Hampshire, motioned that the measure come up for debate, arguing that the bill was not new, "either to members of the House or to the country." Atherton pointed out the facts that the president had several times recommended the bill in the State of the Union, it had been

studied by both houses of Congress and, in the words of “a member of the opposition...every member of the House was sent here by his constituents, either for or against this bill.”<sup>285</sup>

The arguments offered by the bill’s supporters reiterate that the central premise of Jacksonianism was not an antagonism to capitalism itself, but a fervent desire to keep government out of the nation’s economic affairs. Isaac Leet, Democrat of Pennsylvania, echoed a familiar Jacksonian refrain on the floor of the House. If left to their own devices, banks will consistently overextend themselves, issuing notes that they cannot support. While this might be a necessary part of commercial and economic system, there is every reason to keep the government far from such doings.

If, then, the banks will, as I think I have shown, without the aid of the public treasure, vie with each other in the struggle for customers and businesses, will excite speculation and overtrading, and for that purpose will expand their issues and afterward be under the necessity of contracting them, thereby affecting the value of produce and of all articles of trade; if, I say, such is the case, and if this state of things grows out of the very nature of these institutions, how much less will it be the case if you...refuse to loan the public treasure at all? It is this very principle of refusing to loan the public treasure which is to save you and the country from all this feverish excitement and speculation for money’s sake which we see resulting from these institutions.<sup>286</sup>

Democrat Henry Williams of Massachusetts also supported the bill. On June 4, he took issue with a common Whig complaint, that Van Buren’s proposal, like Jackson’s executively mandated Specie Circular, is “aristocratic” in nature. Arguing quite the contrary, Williams described opposition to the Independent Treasury Bill as advocating “the employment of banking institutions, irresponsible privileged associations, with power to use the public revenue as a fund on which to make loans and discounts for the benefit of their officers, stockholders and customers.” These two positions represent “not a mere choice of measures under one and the same theory of government,” but “two

opposite...antagonistical theories.” While the Whig view “is founded in a distrust of the people,” the Jacksonian one expresses “faith in the capacity of the people for self-government.” The two theories “distinctly present the issue whether the many or the few, whether responsible or irresponsible power shall predominate in the administration of the Government.” [sic] Under Van Buren’s plan “the equal rights and sovereignty of the people are not only theoretically but practically acknowledged” by allowing the people, through their government, to distribute their funds for their own benefit, rather than “for the use and benefit...of a class or corporation.”<sup>287</sup>

Another Democrat, John Smith of Vermont, articulated the concern that opponents of divorce have designs on reinstituting a national bank. Billing the issue as a clear-cut one between the forces of the people and those of naked privilege, Smith addressed his concerns to the Speaker of the House. “If, sir, the people are worsted in this contest, the second war of revolution, another national bank will be chartered and made the ‘high tower’ of the aristocracy, from which mandates to control the vast associated and individual wealth of the nation are to emanate.”<sup>288</sup>

On June 30 the House passed the bill 124-107. Believing the new law to be a significant advance for American democracy, Van Buren waited until July 4 to sign it. Yet it would not have the effect for which Van Buren had hoped, as the president was surprised to learn that the people had moved away from his policies. Proud to present himself as the champion of the Independent Treasury Bill, Van Buren faced an opposing candidate, William Henry Harrison, who ran on a campaign of paper money and (a somewhat equivocal) support for the reinstatement of a national bank. The Whigs had become the party of entrepreneurialism, and the principled support of hard money was difficult to sell during the persistent economic contraction. Historian Major L. Wilson quotes the Democratic *Richmond Enquirer* in its “somewhat shrill defense of old

republican ideals,” that “unwittingly defined the central difficulty of the party: ‘What! [S]urrender all your principles, because you cannot command the highest prices for your corn and flour!’”<sup>289</sup>

Perhaps of equal relevance was that the Whig candidate was a Western military hero who appropriated a popular “man of the people” persona, associating himself with the symbols of hard cider and log cabins. Clearly, popular acclaim was no longer the sole province of the Democrats. Harrison’s defeat of Van Buren signaled that the Jacksonian theoretical framework was becoming outmoded. Based on the republican conception of one popular party constantly resisting an aristocratic one, it simply could not accommodate the more democratic model of two competing parties, each with a broad base of support.

But also, an increasing number of Americans did want the government to help them sell their corn and flour, and saw no philosophical contradiction in asking it to do so. As the nineteenth century progressed, the people of the United States became increasingly certain that government should be a major player in preserving the nation’s economic health. What that role should be was not entirely certain, and as Jacksonianism faded as a tenable theory of democratic capitalism, for a long while nothing would emerge to take its place. The middle part of the century would find the country’s attention focused on the Civil War. As philosophical concerns turned away from economic matters and toward slavery and Union, the postbellum political culture would find itself notoriously unprepared for the rise of the large and wealthy corporation. The most important question of the Gilded Age, therefore, would have to be settled in the courts.

## **Chapter Five: Corporate Theory as Gilded Age Democratic Capitalism**

As a popular U.S. general in World War II, Dwight Eisenhower had little trouble translating his status as a war hero into political success, winning a landslide victory over Adlai Stevenson in the 1952 presidential election. As the new president began to assemble his administration, however, Eisenhower's popularity was not sufficient to insulate his proposed Cabinet members from controversy. Charles E. Wilson had been the president of General Motors; upon his nomination to become Secretary of Defense, he resigned his post at GM but proved reluctant to sell his many shares in that company. This refusal proved to be a major sticking point at his confirmation hearings: Senators, noting that General Motors was one of the Defense Department's major contractors, saw a potential conflict of interest in the fact that Wilson would not only be in a position to influence GM's prospects, but would also benefit personally from an increase in the company's share price. During the hearings, Senator Robert C. Hendrickson (R-NJ) asked the nominee to address this issue specifically.

Mr. Wilson, you have told the committee, I think more than once this morning, that you see no area of conflict between your interest in the General Motors Corporation...as a stockholder, and the position you are about to assume. Well now, I am interested to know if a situation did arise where you had to make a decision which was extremely adverse to the interests of your stock and General Motors Corporation...in the interests of the United States government, could you make that decision?

Wilson's immediate response was in the affirmative: certainly he would take into consideration only the needs of his country and not those of his former employer. But he also added that a scenario pitting the two against each other was one that he could not imagine. The response he gave, no doubt intended to be reassuring, had for many observers exactly the opposite effect. "I cannot conceive of one because for years I

thought what was good for our country was good for General Motors, and vice versa. The difference did not exist. Our company is too big. It goes with the welfare of the country. Our contribution to the nation is quite considerable.”<sup>290</sup>

To some, Wilson’s “vice versa” implied that it was in the interests of the United States to ensure the continued welfare of General Motors, prompting the troubling conclusion that the government bore a responsibility to enact specific policies to that end. Operating on the basis of such favoritism, however, would be to do great violence to both market and democratic principles, which would suggest that the financial health of General Motors and other large corporations should be based only on their ability to provide goods at a cost that is amenable to potential purchasers; the implication, of course, is that government promotion of one firm over another, or even of one type of firm over another (i.e., large ones over small ones) could only be motivated by corruption. Thus the frequent and popular misquotation of Wilson’s statement as “what is good for General Motors is good for the country” casts the man and his idea in a rather diabolical light. (Wilson, for the record, was confirmed after agreeing to sell his stock.) Regardless, however, of the fact that Wilson did not actually utter the most egregious form of the remark attributed to him, his statement does raise a very significant question for the student of democratic capitalism. Might it not actually be true that what is good for General Motors, metaphorically speaking, *is* good for America? And if this situation does not hold, then should the company be allowed to command the wealth, power and authority that it does? “Clearly democratic theory needs to be extended,” observed Charles Lindblom, “to take account of what we will call the privileged position of business.”<sup>291</sup>

Perhaps the greatest privilege granted to business firms by the government is their ability to incorporate. The two fundamental advantages that accrue to corporations—the



limited liability of their owners and perpetual existence—follow from no ordinary presumptions of capitalism. Instead, the ability for a firm to incorporate is a legal innovation that met the nationalistic needs of European powers during the Age of Exploration. The business form remained popular, however, long after the political and economic conditions that had given rise to it had passed. By the time of its ascendance in the United States in the late nineteenth century, the corporation's growing power and significance were difficult to square with the intellectual construction of either democracy or capitalism.

Put more generally, then, the attention focused on Wilson's remark raises a question much broader than those that relate to General Motors in the 1950s; it interrogates the privileges and duties of large corporations in a democracy. While today's GM, at roughly one-eighth the value of industry-leading Toyota, no longer occupies the number one spot among the world's largest companies as it did in Wilson's day, the institution of the corporation continues to thrive. During the last fiscal year, the largest corporation in the United States, Wal-Mart, rang up 312 billion dollars worth of sales. That amount is larger than the gross domestic product of all but nineteen countries, and Wal-Mart's 1.7 million employees make the company the largest business firm in the history of the world.<sup>292</sup> The corporate business form is quite simply the preeminent economic institution in the United States, if not the world: the net profits of Cargill, the largest American privately-held company, would place it around 250<sup>th</sup> on the "Forbes 2000" list of the world's largest corporations.<sup>293</sup> One pair of writers goes so far as to call the business company (of which by far the most prominent and successful examples are corporations) "the most important organization in the world," beating out the labor union, the state and even the church, and rivaled as an institution only by the family.<sup>294</sup> Regardless of its actual ranking, however, the corporation is clearly among the most

significant institutions of modern life, in terms of the scope and power of both its responsibilities and its privileges.

But corporations do not naturally arise; they are a unique form of business organization that is allowed to exist only because governments grant its owners the power to do business in this fashion. Thus if corporations are to wield significant power in a democratic society, as Wilson's remark suggests that they do, their existence, powers and responsibilities must have some sanction from the democratic process. In the United States, this people's approval came from a drawn-out legal process that culminated in the Gilded Age. Because it was a relatively unpopular business form until the capital-hungry railroads began to take advantage of its benefits, the corporation drew little attention from lawmakers or even business leaders until the late nineteenth century. Thus the most important developments regarding the integration of the corporation into American life took place in the courts rather than the legislatures or production floors.

This chapter, therefore, concerns the terms, most of which were set by the Federal courts, under which businesses came to be allowed to function as corporations in the United States. One case of particular significance, and the focus of this chapter, was the 1886 Supreme Court finding of *Santa Clara County v. Southern Pacific Railroad*, which declared the American corporation to have the legal rights of a "person" as delineated by the U.S. Constitution. The decision established a significant precedent that the protections of the Fourteenth Amendment, which was written and ratified to guarantee the equal treatment of recently freed slaves, apply equally to citizens of the United States—"natural persons"—as to corporations, or "artificial persons." Though the decision has been affirmed on multiple occasions by the Supreme Court,<sup>295</sup> one might be forgiven for finding such an idea ludicrous, if not offensive. Given the available legal options, however, the creation of "corporate personhood" adequately reflected the

economic and legal priorities of the United States in the Gilded Age society. Despite the fact that this conception emerged from the judicial rather than the legislative branch, the privileges accorded the corporation in American life represent the continuing implementation of democratic capitalism, rather than an abrogation of those principles.

The *Santa Clara* decision itself is quite brief and, upon reading, seemingly rather insignificant; its import only became apparent in later proceedings as corporations cited the case to justify access to Constitutional protections. Since neither the deciding justices nor their contemporary audience viewed the decision as particularly significant or controversial, an understanding of the Court's finding requires that it be situated within the context of competing nineteenth century understandings of the nature of incorporation itself. Thus this chapter will first discuss the theoretical importance of the corporate form: that is, what exactly is at stake with regard to the nature of the corporation? Next I will consider, by way of contrast, two significant legal precedents to *Santa Clara*: the 1819 *Dartmouth College* case, which illustrated the antebellum "grant" or "concession" theory of the corporation, and the 1873 *Slaughter-House cases*, whose decision did not find any substantive economic rights in the Fourteenth Amendment, setting up the conditions under which *Santa Clara* was to affirm those same protections. Finally, I will review the intellectual currents of the Gilded Age in order to show that *Santa Clara* was not significantly out of the mainstream. This is not to say, however, that *Santa Clara* represents wise policy; within a generation significant criticisms of the way of thinking it espouses would emerge, and the chapter will close with a discussion of such critiques.

## **WHAT IS A CORPORATION?**

Governments have long been aware that advantages can accrue to the state by allowing some groups of individuals to be treated as a collective entity. This recognition dates back to European towns, guilds and monasteries; corporations, therefore, are older

than the United States itself. Given that individuals would not desire to bind themselves legally unless they saw some advantage in doing so, the grant of incorporation was a privilege, granted by the crown and sealed by a royal charter. Since the state, in its turn, would confer such a benefit only in those instances in which it believed the new corporate entity to be providing a valuable service to the nation, the earliest corporations tended to be non-profit organizations. During the Age of Exploration, however, the privileges of incorporation were gradually expanded to include profit-making sea voyages, as European monarchs, anxious to satisfy their dangerous imperial and mercantilist ambitions, preferred to allow others to take the required risks.

One corporation in particular acquired tremendous power and wealth. In the seventeenth and eighteenth centuries, the British East India Company had its own army and navy, and literally governed India. In 1700, its home office employed 350 people, and the company would eventually last for some 274 years. (The same company prompted the Boston Tea Party when the British government granted it a monopoly on the North American tea trade.) In North America, the roots of corporations are nearly as deep. Many of the original thirteen colonies were created as joint-stock companies, a forerunner to the modern corporation, and the oldest continually functioning corporation in North America was founded to run Harvard College in 1650. Today, Canada's Hudson's Bay Company can trace its lineage further than any continually operating multinational corporation, having been established in 1670.<sup>296</sup>

Definitive of the corporate form is the selling of shares in the business, in the form of stock certificates. Possession of these shares conveys to their bearer the ownership of a small part of the company; since the company maintains a legal existence distinct from that of its owners and managers, its stock is a portable form of property that can be traded on the stock market without the need to constantly renegotiate the

responsibilities assumed by each new owner. Beyond the existence of a market for trading shares, another obvious implication of the corporate form is that the business itself, again a separate entity from any of the humans who comprise it, assumes perpetual life: a corporation, unlike a partnership, survives the death of any of its owners. Firms limited in their temporal existence to the lifespan of their oldest owner would find it impossible to enter into businesses that required long-term commitments, either by their very nature (e.g., life insurance) or because it would take a long time to recoup the initial investment (e.g., railroads).

The overall effect of these benefits, all of which seem quite reasonable in their own right, is that the state, by allowing incorporation under these terms, provided a benefit to those entrepreneurs who do business as corporations that it did not allow to other types of businesspeople. Far from an expression of the invisible hand, the benefits of incorporation are bequeathals of the state, beginning with the fact that the corporation, as an entity, has any standing at all. But beyond the relative fluidity of ownership symbolized by the stock market and the immortality of the corporation, by far the most significant such advantage is associated with the doctrine known as “limited liability,” under which a corporation’s owners cannot lose any more money than what they have already invested in the business.

Imagine the legal status of a small business that a woman starts, say, in her garage: she would own it outright, in the same way that she might own a house or a car. Yet unlike those items, a business can run up debts. It can, for example, borrow money that it cannot repay, manufacture an unpopular product that generates more costs than revenue, produce environmentally hazardous products that create legal liability, and so on. Regardless of the reason, it is not impossible, or even unlikely, for the business to come to owe more than it is worth. The fact that the business is the possession, and

therefore responsibility, of one particular person means that her obligations to her creditors are not discharged in the event that the firm should exhaust its funds. Creditors who are still owed money will have every right to seize and liquidate the personal assets of the owner in order to claim the funds that are owed them. This dynamic is known as “unlimited liability:” the owner is responsible for any and all obligations incurred by her property (the company), just as she would be if her dog had bitten someone, or her house had caught fire and damaged someone else’s property.

A partnership complicates this arrangement, but alters nothing in the nature of unlimited liability. If two persons each own half of a business, then, generally speaking, each of them is liable for all of the debts that it incurs, and not merely half of them. A third party who is owed a sum of money is not and should not be responsible for sorting out the partners’ finances: if, for example, the business and one of the partners has gone bankrupt, this creditor is entitled to hit up the remaining partner for any monies owed. Complicating matters further, nothing alters the situation if the partners are not equal owners, or if there are twenty partners instead of two: once the firm’s finances are exhausted, each of the partners is obligated to make good on any liabilities that it has incurred. Under this system, it is quite likely that in many cases it will be the partner with the deepest pockets, and not necessarily the one with the most responsibility or biggest share in the company, who will foot the most substantial part of the bill. That is what it means to “own” something: one not only reaps the benefits that the object brings, but also suffers the consequences of unfortunate developments. As an owner of a business firm, a person is liable for its actions; it matters not how little is one’s stake. Taking this principle to its logical, if extreme, conclusion, then the person who invests, as a partner, a hundred dollars in a million-dollar firm could conceivably find herself in a situation where she is liable for far more money than she possesses. This one hundred

dollar investment could, at least theoretically, lose the woman her life savings, her house, and so on.

Moreover, in earlier times the punishment for bankruptcy could include imprisonment or slavery. Under these circumstances, it is difficult to imagine that anyone would want to make a small investment in an expensive enterprise, or, indeed, any business in which he/she was not the primary decision maker. Someone with a little bit of money to invest, even one who believed in the prospect of a given project's success enough to risk losing the initial investment, is probably far less willing to take on the responsibility of paying all the firm's creditors in the event that the business should fail. Yet an entrepreneur needing to raise, say, a hundred thousand dollars for a new venture would presumably find it far easier to find a thousand people willing to risk one hundred dollars than two donors willing to contribute fifty thousand dollars apiece. Thus the traditional legal doctrine of unlimited liability is a major impediment to businesses that require large amounts of start-up capital.

The doctrine of limited liability, and the consequent invention of the joint-stock company and later the corporation, was an attempt by imperial European governments to address this problem. The extended sea voyages by which nations amassed their colonial empires were terribly expensive and carried great financial risk. Thus rather than bankrolling these voyages themselves, governments generally preferred to operate their empires through allowing independent, or at best semi-private, companies to undertake the voyages on behalf of the state.<sup>297</sup> But why would an investor wish to put his own money into such a risky venture? Considering the possibility of being liable for all the expenses incurred if a ship was not to return, potential investors in these enterprises were not terribly sanguine about investing in such an enterprise.

In order to induce investment in the voyages that they desired to see continue but no longer wished to fund, European governments in the Age of Exploration introduced limited liability into their concept of the corporation. Those considering the possibility of putting money into a risky mission of colonization and exploration, facing a choice between profits potentially growing as much as the venture would allow and losses that could not exceed the amount of the initial investment, would be far more likely to capitalize the voyage. Of course, this governmental grant does not come without a cost: in limiting the risk of the investor, it increases that of the creditor (including, potentially, the company's workers), who would, in the event of the debtor company's bankruptcy, simply be out of luck. While limited liability reduced the uncertainty in investing in a company, it increased the risk in providing supplies or contracting for a product with such an organization. It was, in short, a state-sponsored legal construct that privileged the concerns of capital over other interests.

Another important benefit that often accrued with corporate status was a state grant of monopoly privilege. Though not terribly relevant to the modern conception of the corporation, monopoly grants were fairly common in the corporation's early days and play an important role in the development of the institution in the United States. During the Age of Exploration, companies undertaking exploratory voyages would receive a charter from the crown that granted them the sole right to sail to a specific part of the world; the lack of competition obviously increased the likelihood that any given trip would bring back more riches. Later, most such grants from the United States were based on the widely-held premise of the "natural monopoly." According to this idea, competition does *not* lead to a more efficient allocation of goods in industries of a specific nature: those that require a disproportionate outlay of capital to get the business up and running. Under those circumstances, after making this initial outlay, the company



only recoups it slowly during the course of ordinary business. Thus any price competition that would ensue from another business entering the market, far from providing lower cost goods for the customer, would ensure that both companies would eventually go out of business. In those circumstances, so the theory goes, the government could grant monopoly status to a business, not because that business should not have to compete fairly, but because fair competition is essentially impossible. The state would grant a monopoly in the interest of making certain that citizens would be provided with a service that a free market could not otherwise provide. The paradigmatic example of natural monopolies in the nineteenth century United States were, of course, the railroads, but public works such as bridges and toll roads, gaslight companies and eventually electric utilities and eventually the telephone industry all frequently received protections under this theory.

In their initial incarnation, limited liability and the state grant of monopoly privilege were both benefits specifically granted on the assumption that the company was performing a service that was beneficial to the crown. The prevailing conception was that a corporation does not exist until it is created through a charter from the state, and that such entities are not an ordinary part of doing business. In fact, each incorporation required a unique dispensation from the government. This conception of incorporation—as a privilege granted in exchange for the provision of public services—was known as the “grant” or “concession” theory of the corporation. This view of the corporation—as something that is, in its very essence, a quasi-public entity—would hold in the United States until the Jacksonian period.

The evolution of the corporation was driven primarily by political needs rather than economic efficiency. It should not then be surprising that the corporation has never

been easily situated within capitalist theory. The tension stems primarily from the fact that the very existence of the corporation as a hierarchal authority structure restricts market-driven self-interest from motivating the players *within* a firm. The corporate structure, in other words, separates ownership of the firm, from control of it, thereby separating two sets of motivations that had generally assumed to be one.\* While a sole proprietor or a small number of partners can conceivably manage their business, investors who commit relatively small sums to such a venture usually lack both the skills and the inclination to do so. Thus those who purchase stock in a corporation, though nominally the owners of the enterprise, do not exercise the functions traditionally associated with that title. If both owners and managers are content with their respective roles, however, this separation of duties need not cause any tension. To the extent that this arrangement creates a problem, it is only from the perspective of capitalist theory: the very device that allows for the pooling of such significant amounts of capital is the one that insulates the managers from the economic consequences of their own decisions.

Market forces cannot reward or punish any given use of resources if the decisions about such assets are made by one group of people (the managers) while the financial consequences of those decisions are borne by an entirely different set (the owners). The original insight of the invisible hand suggests that the market can distribute goods efficiently by transmitting information about the availability of, and desire for, specific goods through the prices of those items. But those who work for a firm—as opposed to those who own it—have no personal incentive to react to these cues.

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\* It should be noted that the separation of ownership from control is not unique to the corporate form. To this day, for example, large law firms are often run as partnerships, in which the attorneys who become “partners” have little or no say in the day-to-day running of the firm. Though firms that sever ownership from control are not always corporations, nearly all corporations do separate these two functions: purchasers of corporate stock are seldom, if ever, expected to run the company.

Imagine, as an employee of a firm, the rational agent hypothesized by economic models. *Homo economicus*, in such a situation, is not a free player in the market, but is instead motivated by whatever incentives and penalties his employer has seen fit to provide. He has, for example, no inducement to work hard if he will be paid the same amount for minimally sufficient labor, every reason to invest the company's assets in ways that make his personal portfolio more valuable, some motivation to make his personal performance look good to his superiors even if it might compromise the health of the firm, and so forth. Under these circumstances, there is no reason to believe that some self-correcting mechanism exists to ensure that this person's actions serve the larger social purpose of providing the most efficient distribution of goods.\*

This phenomenon is known to economists and organizational behaviorists as the "agency problem," and it should be of little surprise that one of the first people to raise it as an objection to corporations was Adam Smith himself. Since the market mechanisms that motivate economic actors do not directly bear on the employees of a corporate firm, he argued, such organizations promised a woefully inefficient distribution of resources.

The directors of such companies, however, being the managers rather of other people's money than of their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own...Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company.<sup>298</sup>

Though today the corporation appears as the apotheosis of market values, its success should not be considered a triumph of free market capitalism.

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\* One might dismiss this line of argument as overly cynical, stressing that human beings can be motivated by other concerns beyond pecuniary self-interest, such as pride in one's work or loyalty to the company. Such a refutation, however, rejects the logic of the invisible hand itself; it throws out the capitalist baby in order to save the corporate bathwater.

In fact, the insulation of intra-corporate transactions from market forces has prompted some to ask why corporations, or, indeed, any sort of business firm, exists at all. If the market will relentlessly impose efficiency upon economic actors, and individuals who work in firms are not responding to market signals, then it would seem that the inefficiencies of the firm would eventually put the corporations out of business. Nobel Prize-winning economist Ronald Coase has provided an answer for this in two classic articles: “The Nature of the Firm” (1937) and “The Problem of Social Cost” (1960). Observing that traditional economic theory “assumes that the direction of resources is dependent directly on the price mechanism,” but that “[w]ithin a firm, the description does not fit at all,”<sup>299</sup> Coase was prompted to wonder what economic function that firms themselves actually serve. To the response that the firm provides a necessary organization of resources and energies, he pointed out that this is supposedly the exact function of the pricing mechanism. “[H]aving regard for the fact that if production is regulated by price movements, production could be carried on without any organisation [sic] at all, well might we ask, why is there any organisation?”<sup>300</sup>

There are obvious costs to forming a firm and executing transactions within its matrix, rather than utilizing the native efficiency of the market’s price-setting mechanism. Yet firms continue to exist and even prosper. While Smith appeared to implicitly assume stupidity or corruption on the part of those who form and support companies, Coase points out that the conclusion that firms are less efficient than market transactions turns on the erroneous assumption that there are no costs associated with using market mechanisms. Only if market transactions exact no costs is it reasonable to conclude from the fact that firms necessarily come with inefficiencies that their burdens are greater than other available options. Yet exchanges on the market are not free of costs. “In order to carry out a market transaction it is necessary to discover who it is that

one wishes to deal with, to conduct negotiations leading up to a bargain, to draw up the contract, to undertake the inspection needed to make sure that the terms of the contract are being observed, and so on.”<sup>301</sup>

Thus the appropriate question to ask is not whether there are inefficiencies associated with firms, but whether these costs are greater or less than those that would be incurred in the absence of such an organizational structure. “The costs of negotiating and concluding a separate contract for each exchange transaction which takes place on a market must also be taken into account.”<sup>302</sup> The formation of a firm will make economic sense in those cases in which an entrepreneur assesses the transaction costs of obtaining the various factors in production and bringing goods to market to be greater than that of the inefficiencies inherent in foregoing the advantages of the price system.

If Coase was right (and his Nobel Prize suggests that many economists believe that he was), then Adam Smith was wrong to conclude that firms would introduce a disadvantage into the dealings of those who use them. Though Smith correctly saw that the relations within a company are not governed by the law of supply and demand, he could not imagine that such an arrangement would, for that very reason, convey an advantage over normal market transactions. The very function of a company—and its specific incarnation in the form of the corporation—is to escape market pressures on intrafirm transactions while reaping the advantages of the marketplace in the conduction of interfirm business. Above I mentioned the uneasy fit between the theory of the corporation and the ideology of capitalism, and the reason for this disjunct should now be apparent. The corporation is not the natural result of market forces, but a construct specifically designed to subvert their tendencies. As such it is a violation of the free-market principles of capitalism.

Yet the presentation of democratic capitalism articulated in this dissertation can easily assimilate the corporation into its architecture in a way that a strict market theory cannot. The corporation is unquestionably a political construct, designed to accomplish specific ends amenable to the relevant powers. But this fact by itself need not pose a theoretical problem unless one operates under the assumptions of a libertarian *laissez faire* philosophy. If we understand democratic capitalism differently—as a system under which the people decide what they want the economy to accomplish—then the relevant questions begin to change. Instead of asking whether the corporation violates the ideals of capitalism (which it clearly does), we ask whether or not the economic goals attained by allowing this legal construction to exist are ones that comport with the will of the people.

#### **ANTEBELLUM UNDERSTANDINGS OF THE CORPORATION**

The earliest understanding of the corporation in the United States was perhaps the most straightforward. According to this conception, called the “grant” or “concession” theory, corporate status is a privilege that the state bestows upon a number of people who petition it for the right to be treated, for specific purposes, as a group rather than a collection of individuals. The state generally does not see fit to grant the privileges that flow from incorporation unless it views the project that those individuals wish to undertake as one that will advance some interest of the state. Under this interpretation, the state creates a new, “artificial” being—so called because it comes into being not by normal social interaction, but by legal fiat—and the charter of incorporation is essentially a contract between two parties: the state and that being. Should the other side break the contract—by ceasing to operate, for example, or overcharging its customers—the corporation could be dissolved. The corporation owes its very existence to the state, and the state allows the firm to exist in this particular form only because it sees some public

purpose fulfilled in doing so. This understanding underwrote two widely held conclusions during the early national period: that a given corporation would be allowed to exist only as long as it provided some service to the citizenry, and that corporations, more so than other business forms, would be subject to heavy regulation by the state.

For this reason, the vast majority of corporations in the early United States were those that obviously fulfilled some public need, such as toll bridges, gas lighting companies and, eventually, railroads. Additionally, state governments' desires to keep close tabs on these concerns required that each application for a corporate charter needed to be individually approved by a state legislature, and these contracts usually expired after a finite period of time (typically twenty or twenty-five years), at which point the state legislature might or might not see fit to renew it. Because of the strict governmental supervision, most businesspersons preferred not to avail themselves of the corporate form unless circumstances absolutely necessitated such an action: in 1789, for example, the United States could boast of only six nonbank corporations.<sup>303</sup>

From a legal perspective, the most influential and representative decision in this tradition is the 1819 *Trustees of Dartmouth College v. Woodward*, an opinion delivered by Chief Justice John Marshall. Dartmouth College had received an English royal charter in 1769; the act granted the school corporate status in perpetuity, and provided for the trustees themselves to select the members to replace those who had died or resigned. As New Hampshire, Dartmouth's home state, never had an occasion to review the charter, the college effectively operated without state supervision. Some fifty years later, the state sought to establish greater control over the college by passing a law that would establish a board of overseers to govern the trustees, while rewriting the rules governing

the board in order to increase its membership and allow the governor to fill its vacancies.\* The original trustees took the state to Federal court on the grounds that these laws violated Dartmouth's initial charter.

The Court ruled in favor of the plaintiffs. Chief Justice John Marshall, in writing for the majority, established early in the decision that he views Dartmouth's charter as nothing more or less than a contract between the corporation and the state. Early in the decision he notes the relevance of the fact that "the American people have said in the Constitution of the United States that 'no State shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts'" and that "[i]t can require no argument to prove that the circumstances of this case constitute a contract."<sup>304</sup>

Marshall nonetheless provides substantial argument on exactly this point. The idea against which he directs his energies is that the specific nature of corporate charters burdens their holders with uniquely public responsibilities. Under this interpretation, even if a charter is a contract, it is of a fundamentally different sort than, say, one between a buyer and a seller. Because the incorporators receive special benefits from the state, and because the state only grants those privileges to incorporators who are providing a service to the people, all corporations are, in some sense, public entities. The entire thrust of the *Dartmouth College* decision is toward the rejection of this view.

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created...But this being does not share in the civil government of the country, unless

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\* Some political intrigue motivated this attempted power grab as well. New Hampshire's governor, William Plumer, was a Republican. The Dartmouth board of trustees represented one of the few remaining Federalist strongholds in the state, but its perpetual charter rendered it untouchable by outside political forces. Daniel Webster, the Dartmouth alumnus who eloquently presented the college's case to the Supreme Court, was also a Federalist at the time.



that be the purpose for which it was created...It is no more a state instrument than a natural person exercising the same powers would be. If, then, a natural person, employed by individuals in the education of youth or for the government of a seminary in which youth is educated would not become a public officer or be considered as a member of the civil government, how is it that this artificial being, created by law for the purpose of being employed by the same individuals, for the same purposes, should become a part of the civil government of the country? Is it because its existence, its capacities, its powers, are given by law? Because the government has given it the power to take and to hold property, in a particular form, and for particular purposes, has the government a consequent right substantially to change that form, or to vary the purposes to which the property is to be applied? This principle has never been asserted or recognised [sic], and is supported by no authority.<sup>305</sup>

From a contemporary perspective, the decision appears to limit state control over corporations and to decry the assumption that these entities have any obligation whatsoever to the public good. But this point is not exactly the one that Marshall is argues. Corporations unquestionably are granted special privileges, writes Marshall, and the state should ensure that the people receive adequate compensation for granting them. But the place to do that is in the initial charter, not in subsequent legislation. Since individuals seeking to incorporate are not forced to seek or accept corporate charters, they are not forced to accept the state's terms of incorporation. If the state requires more of a public purpose, or wishes to limit the privileges of corporate entities, it can restrict its initial offer. Marshall does not argue that the state is obligated to, or restricted, from any particular terms in its corporate charters. But once those terms are offered and accepted by the incorporators, the state is bound by its own word.

The benefit to the public is considered as an ample compensation [to the state] for the faculty [that incorporation] confers [to the incorporators]. If the advantages to the public constitute a full compensation for the faculty it gives, there can be no reason for exacting a further compensation, by claiming a right to exercise over this artificial being a power which changes its nature...There can be no reason for implying in a charter,

given for a valuable consideration, a power which is not only not expressed, but is in direct contradiction to its express stipulations. From the fact, then [sic], that a charter of incorporation has been granted, nothing can be inferred which changes the character of the institution, or transfers to the government any new power over it.<sup>306</sup>

Moreover, it cannot be logically inferred from the particular nature of Dartmouth's activities in education that its mission in the public service render it a public entity. Since businesses are only allowed to incorporate if the state perceives them to be performing a public service, such a policy would lead to the conclusion that all corporations are similarly "public." Most important for Marshall, however, is the fact that corporate charters mention no such consequence; to make the claim that they do is to counterintuitively presume that the doing of good deeds would invalidate the terms of the charter.

It is probable, that no man ever was, and that no man ever will be, the founder of a college, believing at the time, that an act of incorporation constitutes no security for the institution; believing, that it is immediately to be deemed a public institution whose funds are to be governed and applied, not by the will of the donor, but by the will of the legislature.<sup>307</sup>

A corporate charter, then, is simply a contract between two parties. The fact that one of them happens to be a state government does not give that party the right to rewrite prior agreements. Since the Constitution forbids any state from passing any law that impairs the obligation of contracts, Marshall sees no grounds upon which New Hampshire can assert new authorities over Dartmouth College without violating the U.S. Constitution.

*Dartmouth College* is often viewed as a "pro-corporate" decision that limits the power of the state over incorporated businesses. But neither its reasoning nor its import should be read so narrowly. The state was not restricted from imposing restrictions on the corporation, as long as it did so in through the vehicle of the charter. Indeed, in the

years after *Dartmouth College*, this is what most states did, issuing increasingly restrictive charters that came to serve as the *de facto* corporate code.<sup>308</sup>

The understanding of the corporation as an artificial entity, however, would not stand. “From the Civil War until the end of the century,” writes historian Herbert Hovenkamp, “the notion that the corporate charter was a contract according vested privileges to the corporation substantially fell apart. Business corporations lost contract clause arguments in the great majority of cases, usually on rationales that were flatly inconsistent with Marshall era interpretations.”<sup>309</sup> This change in understanding was motivated primarily by a change in political conditions: the ascendant Jacksonianism of the mid-nineteenth century assailed state grants of corporate charters as evidence of widespread corruption in the state legislatures. Jackson himself decried “the multitudes of corporations with exclusive privileges which they have succeeded in obtaining in different States,” and, often enough, such charges were well-founded. “Lobbying expenses, delay and bribery” testifies economic historian Stuart Bruchey, “often attended appeals to state legislatures for acts of incorporation.”<sup>310</sup> Viewing the charter as a vehicle by which well-connected individuals obtain unfair privileges, the Jacksonians’ prevalent demand was to eliminate the opportunity for corruption and unfair competition by streamlining and formalizing the incorporation process, effectively allowing anyone to incorporate. New York adopted a so-called “general incorporation” law as early as 1811, and several states had done so by the time of the Civil War. Though many states that adopted these laws also continued to charter corporations through legislative acts, in 1845 Louisiana amended its constitution to forbid this practice, and many other states soon followed.

The greater ease in incorporating led to a rapid increase in the number of corporations. In New England, for example, 27.8% of charters during the nineteen-year

period 1844-1862 were through general acts; the shorter subsequent period 1863-1875 witnessed not only a significant increase in the number of incorporations (4,575 from 3,533) but also a rise of general incorporations to nearly half the total number of charters.<sup>311</sup> “[I]ncorporation by the 1870s,” writes Alan Trachtenberg, “had become more of a right than a privilege,” and it was in the Gilded Age that the corporation came of age. “Freed from encumbrances often attached to special charters and from the presumption of public service, of any but a profit-making purpose, the corporation swiftly displaced unincorporated forms...as the most significant organization of business.”<sup>312</sup>

Against this new reality, the legal and philosophical understanding of the corporation embodied in the *Dartmouth College* decision—as a state-created entity granted special powers because its goals have been deemed to be in the public interest—became increasingly difficult to defend. Since general incorporation laws made the corporate form available to many different kinds of businesses, one could no longer assume that corporations were generally, or even usually, oriented towards civic purposes. Additionally, as a grant of incorporation became little more than perfunctory, the notion that corporations owed their very existence to these state instruments ran counter to experience. “Incorporation,” stated legal historian Morton J. Horwitz, “eventually came to be regarded not as a special state-conferred privilege but as a normal and regular mode of doing business.”<sup>313</sup>

But if corporations exist outside of normal market practices, and the state does not specifically create them, then how and why do they exist? And why are they allowed special privileges, if they are not doing the people’s business? The answer that the substantially pro-business jurists developed over the latter half of the nineteenth century is that the benefits of incorporation are not grants from the state at all. They are, instead, merely reflections of basic Liberal rights. These rights are not those of the corporate

body *per se*, but of the individuals who make up its membership. Such freedoms are generally economic ones of dubious philosophical lineage, and base much of their legal standing on interpretations of the Fourteenth Amendment to the Constitution in the United States.

### **“PRIVILEGES OR IMMUNITIES”**

The famous proclamation of the Declaration of Independence that “life, liberty and the pursuit of happiness” are “unalienable rights” is in fact a gloss on a refrain from the *Second Treatise*. There Locke invokes an innate “title to perfect freedom” that grants an individual a “power” to “preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men.”<sup>314</sup> Locke saw property as an overarching concept under whose umbrella even freedom is included. But in the ordinary sense of the term, in which an individual owns an inanimate object, the right to property has an ambiguous history in American Constitutional law.

Until the Fourteenth Amendment, Constitutional recognition of private property was a rather piecemeal affair, though such protections certainly existed. The Article One restriction against state laws that “impair the Obligation [sic] of Contracts,” [sic] for example, was largely understood to forbid states from nullifying financial obligations owed to creditors. Similarly, the Fifth Amendment guarantees that property cannot “be taken for public use, without just compensation.” But, by and large, antebellum Americans could not point to any sweeping property right. As such, the grant theory of the corporation met with no serious philosophical resistance: states had the rights to bestow economic privileges in order to advance the public interest, and those who lost out under this arrangement had little legal recourse. In revising the relationship between the Federal and state governments, however, the Fourteenth Amendment would eventually delegitimize this rationale for corporate privileges. Since corporations had by

then proven their usefulness in promoting both nationwide economic growth and private wealth, jurists wished to find an alternative justification for this institution. They would find it in an individualized property right derived from that same amendment; the enshrinement of this right in the *Santa Clara* decision would ironically leave corporations in a far more powerful position than they could have been under any version of the grant theory.

As one of the three “reconstruction amendments,” the immediate purpose of the Fourteenth Amendment was to deal with the fallout of the Civil War. Slavery was officially banned upon the ratification of the Thirteenth Amendment in 1865, and many former Confederate states responded to this development by the passage of what were known as “Black Codes.” Such laws restricted the civil rights of African Americans and functioned as the re-institution of antebellum racial stratification without the legal device of slavery. The Fourteenth Amendment was a response to these developments, and its 1868 ratification eliminated the states’ legal prerogative to impose such inequities. Its first provision repudiated the notorious holding of the *Dred Scott* decision—that African Americans have “no rights which the white man was bound to respect”<sup>315</sup>—by specifically declaring “[a]ll persons born or naturalized in the United States” to be “citizens of the United States and of the State wherein they reside.” Finally establishing once and for all that former slaves are, in fact, citizens, the amendment denied to the states the ability to “abridge the privileges or immunities of citizens of the United States.” Its two other major injunctions forbade states the ability to “deprive any person of life, liberty, or property, without due process of law” and to “deny to any person within its jurisdiction the equal protection of the laws.”

The first time that this amendment came before the Supreme Court was the 1873 decision in the *Slaughter-House cases*. Significantly, this case had little to do with racial

discrimination, and instead concerned possible limitations on the ability of the states to charter corporations. The consolidation of three separate suits involving any number of parties, the *Slaughter-House cases* involved a Louisiana statute passed in response to a public health crisis in New Orleans. During the Reconstruction era, New Orleans was among the most prominent centers of meat production in the nation, and the relatively small start-up costs in that business attracted many former slaves and other entrepreneurs of limited means. Moreover, the need of moving water to keep one's operation clean would place nearly all of these butchers on the banks of the Mississippi. Thus, says Hovenkamp, "New Orleans became overrun with small, economically marginal, grossly unsanitary slaughterhouses,"<sup>316</sup> whose waste created a polluted and unsafe river.

Additionally, the city's prospects for remaining an important center for beef production hinged upon its ability to incorporate a new refrigeration process that would allow it to ship meat year-round. This procedure admitted of such high startup costs that any firm wishing to use it would have to operate at a much larger scale than that of the typical New Orleans slaughterhouse. Taking all of these issues into consideration, the state passed a law, at New Orleans's request, to charter a new corporation. This new entity, the Crescent City Live-Stock Landing and Slaughter-House Company, was to receive a monopoly on all of the "landing, slaughtering or keeping of any animals."<sup>317</sup> The law also required that the new corporation build a slaughterhouse large enough to accommodate all of the area's butchers, mandated that the corporation make these facilities available to anyone at a price set by the statute, and provided for salaried inspectors to ensure the quality of the outgoing meat. The monopolistic charter of this corporation, in other words, was designed both to alleviate a growing public health crisis and to aid the area's economic development by providing butchers the means to take advantages of economies of scale that they could not otherwise afford.

Not all of those affected by the law, however, saw it as such judicious legislation. Several butchers got together and sued on the grounds that “the act of the legislature had made a monopoly and was thus in violation of the most important provisions of the thirteenth and fourteenth amendments to the Constitution of the United States.”<sup>318</sup> Their attorney was former Supreme Court justice John A. Campbell, who had resigned his position prior to the Civil War in order to join the Confederacy. Campbell presented a powerful argument that positioned the new Fourteenth Amendment as a protection of economic rights against Federal restrictions.\* Though his presentation did not ultimately carry the day, legal historian Robert McCloskey characterized the Court as “visibly shaken”<sup>319</sup> by it.

The very first Fourteenth Amendment case heard in the Supreme Court immediately addressed the most sensitive and controversial aspect of that law: its impact upon cherished and hard-won settlements regarding American federalism. Campbell’s argument picked up on a slight ambiguity in the amendment’s language, and exploited it on behalf of his clients. Since the Fourteenth Amendment clarifies that all native-born Americans (with certain exceptions, presumably Indians) are citizens of both the country and of “the State [sic] wherein they reside,” any American citizen living in a particular state will automatically have two concurrent sets of rights: those of a United States citizen, and those of a citizen of a particular state. So when the amendment goes on to require states to recognize all “privileges or immunities of citizens of the United States,” it is arguably unclear which set of rights it is guaranteeing. Though this might seem a distinction of truly Scholastic moment, its consequences are of the utmost importance. If

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\* Campbell also presented other arguments that were not based on the Fourteenth Amendment. One such effort was the rather preposterous claim that in denying the butchers the unfettered use of their own land and livestock, the state of Louisiana had effectively enslaved these men in violation of the Thirteenth Amendment. The majority decision paid these arguments little heed, dispatching them without much attention.



the Fourteenth Amendment forbids states from abridging the privileges or immunities of *state* citizenship, then it is requiring only that they apply their own laws in a fair manner, in such a way that each person under their jurisdiction receives similar treatment. But if the purpose of the amendment is to secure those rights held by virtue of *national* citizenship, then it mandates that states respect the specific rights that the Federal government has deemed them to have. Under the latter interpretation, two significant consequences emerge: 1) the balance of American federalism would have shifted significantly away from the states and toward the Federal government, and 2) the burden would be upon the Federal government to articulate what specific rights citizenship of the United States would entail.

In his argument, Campbell made it clear that the rights guaranteed by the Fourteenth Amendment are in fact those of national, as opposed to state, citizenship.

Now, what are ‘privileges and immunities’ in the sense of the Constitution? They are undoubtedly the personal and civil rights which usage, tradition, the habits of society, written law, and the common sentiments of people have recognized as forming the basis of the institutions of the country. The first clause in the fourteenth amendment does not deal with any interstate relations, nor relations that depend in any manner upon State [sic] laws, nor is any standard among the States referred to for the ascertainment of these privileges and immunities. It assumes that there were privileges and immunities that belong to an American citizen, and the State is commanded neither to make nor to enforce any law that will abridge them.<sup>320</sup>

He was not terribly specific, however, as to which Federal privilege or immunity he believed to have been violated.\* Moreover, his reference to extra-Constitutional precedents such as “tradition” and “the common sentiments of people” suggested no awareness of any specifically enumerated Federal right that could have supported his

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\* Or, at least, he does not make this point in the transcript, which makes clear that Campbell argued the case “at great length.” Consequently, the court reporter could not “pretend to give more than such an abstract of the argument as may show to what the opinion of the court was meant to be responsive.” *Slaughter-House cases*, 83 US 36, 18 (1873).

claims. Indeed, there are no such rights: beyond the liberties protected in the Bill of Rights, none of which are relevant here, the Constitution specifically enumerates few rights that would appear to bear upon the *Slaughter-house cases*. The national charter forbids the states from passing *ex post facto* laws or coining money, for example, but lists nothing that might cover the ability to slaughter animals or store their carcasses.

Though he never established a specific Federal privilege or immunity that he believes this law to have violated, Campbell's clear implication is that the right in question relates to the ability to pursue a livelihood. "By an act of legislative partiality [the Louisiana law] enriches seventeen persons and deprives nearly a thousand others [the number of butchers in the New Orleans area, according to Campbell] of the same class, and as upright and competent as the seventeen, of the means by which they earn their daily bread."<sup>321</sup> But if Louisiana believed the issuing of such a charter to be in the best interests of their citizens, and the power to create corporations has traditionally been a state prerogative, then the burden was on Campbell to show that the particular charter issued to the Crescent City Live-Stock Landing and Slaughter-House Company violates a specific Federal right. The attorney substantially failed to provide such reasoning, but the broad outlines of his argument suggest that he was attempting to position the Fourteenth Amendment as a guarantor of, as it says, the "equal protection" of state laws rather than any specific Federal right. Under this somewhat confusing interpretation, citizens of Louisiana would have a right as United States citizens to be treated fairly and equally by their state. Thus the butchers would not have a specific right to slaughter, or perhaps even to practice any given trade, but only a right to do so under conditions in which Louisiana permits others the same opportunities. This view of the Fourteenth Amendment comes very close to one holding that the amendment guarantees state rather than Federal privileges and immunities; despite Campbell's specific disavowal of this

line of reasoning, he nonetheless seemed to suggest it by consistently citing the unequal privileging of some butchers over others.

The legal issue of Fourteenth Amendment federal protections would have significant consequences for the subsequent development of the corporation. While all of the justices would reject the notion that the Fourteenth Amendment guarantees state privileges and immunities rather than national ones, they would substantially disagree in finding very different rights for the amendment to protect. Justice Samuel F. Miller, writing for the majority, found very few specific rights articulated in the Constitution and offered no relief for the butchers. Justice Stephen F. Field, however, wrote one of the most significant and influential dissents in the Court's history, finding in the Constitution a host of previously unacknowledged economic rights. Field lost the battle but won the war, as by the late nineteenth century his position would become the norm, within ten years animating the new understanding of the corporation that would receive, in the *Santa Clara* decision, the imprimatur of the Court.

Though the *Slaughter-House cases* were fundamentally a case about civil rights and Federalism, the specific law in question established a corporation, and it was the state's ability to perform this action that was at issue. Miller's decision therefore buttressed the grant theory of the corporation by noting that grants of incorporation are a long-accepted and uncontroversial feature of the common-law, and as such are a common and unremarkable state prerogative.

[I]t is said that in creating a corporation for this purpose, and conferring upon it exclusive privileges—privileges which it is said constitute a monopoly—the legislature has exceeded its power. If this statute had imposed on the city of New Orleans precisely the same duties, accompanied by the same privileges, which it has on the corporation which it created, it is believed that no question would have been raised as to its constitutionality. In that case the effect on the butchers in pursuit of their occupation and on the public would have been the same as it is now.

Why cannot the legislature confer the same powers on another corporation, created for a lawful and useful public object, that it can on the municipal corporation already existing? That wherever a legislature has the right to accomplish a certain result and that result is best attained [sic] by means of a corporation, it has the right to create such a corporation, and to endow it with the powers necessary to effect [sic] the desired and lawful purpose, seems hardly to admit of debate.<sup>322</sup>

Thus without the recent ratification of the Fourteenth Amendment, the case would have been open-and-shut and its appearance before the Supreme Court rather unlikely. But the new amendment had altered the legal terrain; Campbell's argument had relied heavily upon it and the Court would split on its import. On Miller's restrictive read of Federal privileges and immunities, the Fourteenth Amendment issues no threat to the state prerogative of incorporation, leaving the grant rationale for the corporation significantly intact. But Field's holding that the Constitution grants specific economic freedoms to American citizens, on the other hand, would significantly curtail the ability of states to endow specific economic actors with the privileges associated with incorporation. Because the position that we can retroactively call the waning one actually won the case, one cannot call the *Slaughter-House cases* a watershed in the move away from the grant theory. The stark ideological contrast of the majority and minority decisions, however, provide an excellent window onto the terrain of late nineteenth century debates over the rights and responsibilities of the corporation.

Justice Miller wrote the *Slaughter-House cases* for a narrow majority of five-to-four that included Chief Justice Salmon P. Chase. The Associate Justice wholeheartedly rejected Campbell's argument; casting aside the attorney's claim to be discussing Federal rights, Miller found him to be illegitimately invoking those relevant to the states. Since the state's power in this area has been well established, Miller declared "that the authority

of the legislature of Louisiana to pass the present statute is ample,”<sup>323</sup> and that Campbell was therefore attempting to apply the Fourteenth Amendment inappropriately.

Miller, however, had to justify his own interpretation of the amendment. In considering the import of the amendment upon the case at hand, he begins with an obvious but important point: even though the circumstances of the Civil War and Reconstruction provide the immediate background of the Fourteenth Amendment, it must apply to all cases that fall within its wording. In particular, this means that people who are not black are still covered under its provisions. Though the “pervading purpose” of all of the Reconstruction amendments is “the freedom of the slave race,” one cannot therefore conclude that “no one else but the negro [sic] can share in this protection...And so if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent.”<sup>324</sup> The *Santa Clara* decision would eventually incorporate this reasoning in declaring the Fourteenth Amendment to apply to corporations. Though many are offended by the fact that a right conceived in order to protect society’s most vulnerable members can be extended to some of its most powerful, the restriction of the Fourteenth Amendment to African Americans would have been logically incoherent and legally undesirable. The amendment as written left no other interpretation realistically possible.

Having established that the mere fact that the butchers are not black does not invalidate their claim to Fourteenth Amendment protections, Miller then turned to the central issue: what specific rights the amendment does and does not protect. Here he accuses Campbell of confusing the rights that inhere by virtue of Federal citizenship with those that come with state citizenship. The plaintiffs’ argument, he wrote, “rests wholly on the assumption that the citizenship is the same, and the privileges and immunities

guaranteed by the clause are the same.”<sup>325</sup> Miller believes that Campbell, once establishing that the Fourteenth Amendment establishes Federal oversight of state laws, then smuggled in specific rights that are not derived from the U.S. Constitution but, if they exist at all, are to be found only at the level of Louisiana precedent. “If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the State [sic] as such the latter must rest for their security and protection where they have heretofore rested [i.e., with the states themselves]; for they are not embraced by this paragraph of the amendment.”<sup>326</sup>

The implications of this seemingly straightforward distinction are profound. Since the Fourteenth Amendment forbids the abridgement of Federal, rather than state, privileges and immunities, it cannot legitimately be used to compel a state to respect its own laws in dealing with any given citizen. Thus the ostensible purpose of the amendment—to protect a state’s citizens from the capricious or unfair actions of their own local legislatures—was ruled unconstitutional. To do otherwise, argued Miller, would be to grant the Federal government an effective veto over many state actions, and the sweeping consequences of that interpretation are so odious that they simply could not have been what the writers of the amendment intended.

Was it the purpose of the fourteenth amendment, by the simple declaration that no State [sic] should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned, from the States [sic] to the Federal government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of congress [sic] the entire domain of civil rights heretofore belonging exclusive to the States [sic]? All this and more must follow, if the proposition of the plaintiffs in error be sound. For not only are these rights subject to the control of Congress whenever in its discretion any of them are supposed to be abridged by State [sic] legislation, but that body may also pass laws in advance, limiting and restricting the exercise of legislative power by the States [sic], in their

most ordinary and usual functions, as in its judgment it may think proper on all such subjects. And still further, such a construction followed by the reversal of the judgments of the Supreme Court of Louisiana in these cases, would constitute this court a perpetual censor upon all legislation of the States [sic], on the civil rights of their own citizens, with authority to mollify such as it did not approve as consistent with those rights, as they existed at the time of the adoption of this amendment...We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislatures of the states which ratified them.<sup>327</sup>

Miller is aware that legal reasoning based on the consequences of adopting a specific interpretation is generally “not always the most conclusive.” But when these repercussions are “so serious” and “far-reaching,” that they “fetter and degrade the State [sic] governments” in a way that “radically changes the whole theory of the relations of the State [sic] and Federal governments to each other and of both these government to the people,” the conclusion “has a force that is irresistible, in the absence of language which expresses such a purpose too clearly to admit of doubt.”<sup>328</sup>

In dissent Justice Field would take issue, in the strongest possible terms, with this interpretation. If the majority is correct, he wrote, and the language of the Fourteenth Amendment only applies to those rights “specially designated in the Constitution or necessarily implied as belonging to citizens of the United States,” then it was “a vain and idle enactment, which accomplished nothing, and most unnecessarily excited Congress and the people on its passage.”<sup>329</sup> Clearly anticipating such an objection, Miller articulated several Federal rights in order to show that his interpretation did give the Fourteenth Amendment something to do. His rather anemic list of such privileges and immunities, however, might have made his opponents’ case rather than his own: it included, among a few others, the right to travel to the seat of government and transact business there, the right to access Federal seaports and to demand Federal protection when traveling abroad. Though Miller is technically correct in maintaining that his

interpretation does not render the amendment completely without content, the rights that he cites hardly seem robust or controversial enough to have motivated a constitutional amendment.

Such an objection was the main focus of Field's dissent, which has arguably been more influential to subsequent legal thought than the actual decision. A significant proponent of the *laissez faire* theory that was becoming increasingly popular throughout the late nineteenth century, Associate Justice Stephen J. Field had been raised in Connecticut as the son of a minister in the waning Puritan tradition. Field's own later success in Gold Rush-era California would support his convictions—shared by many in the era of Social Darwinism—that commerce is the arena in which the cream can rise to the top. Protection of private property, he believed, is therefore the most significant of governmental responsibilities, and Field was consistently distressed at the scant protections that these liberties received, not only from the Constitution itself, but from American legal precedent. Though a Democrat, Field had opposed Southern succession, and Abraham Lincoln rewarded his loyalty with a nomination to the Supreme Court. Once there, Field aggressively began to write opinions echoing his *laissez faire* convictions—at first in the minority but later, as the Court became more protective of property rights, increasingly speaking for the majority.

Early in his *Slaughter-House* dissent, Field expounds with great confidence his belief that the side of morality lies with the butchers. “No one will deny the abstract justice which lies in the position of the plaintiffs in error,” he claims, seemingly oblivious to the fact that a majority of his brethren on the Court expressed little sympathy for them. His task in the dissent, however, is legal and not moral; it is to “show that the position has some support in the fundamental law of the country.”<sup>330</sup> Field acknowledged that the state of Louisiana has the right to exercise what jurists refer to as the “police power”—to



pass and enforce legislation in the interest of public health and safety. But he denied that the terms under which the state chartered the Crescent City Live-Stock Landing and Slaughter-House Company qualify as an expression of that power. Only two of the legislation's regulations—the provision fixing appropriate locations for slaughtering, and the one requiring that the animals be inspected—fall within that category. But “[i]n all other particulars the act is a mere grant to a corporation created by it of special and exclusive privileges by which the health of the city is in no way promoted...The pretence of sanitary regulations for the grant of the exclusive privileges is a shallow one, which merits only this passing notice.”<sup>331</sup>

Field's real concern closely tracks the one that Campbell voiced in his arguments before the Court: that in establishing a corporation with special privileges, Louisiana has disallowed other would-be butchers from practicing their trade. “The act of Louisiana presents the naked case, unaccompanied by any public considerations, where a right to pursue a lawful and necessary calling, previously enjoyed by every citizen...is taken away and vested exclusively...in a single corporation.”<sup>332</sup> Indeed, Field saw this case as being about much more than slaughtering animals in Louisiana. On the reasoning of the majority, he argued, there would be no check—including those of the Reconstruction Amendments—against arbitrary state power in the economic realm. If the current law grants a corporation a monopoly right to slaughter animals for twenty five years, there is no reason that another law could not give such rights to one person rather than several; in any industry whatsoever; or, at the logical extreme, in perpetuity. Field therefore finds Miller's position to be of very large and dangerous import. “[U]pon the theory on which the exclusive privileges granted by the act in question are sustained, there is no monopoly, in the most odious form, which may not be upheld.”<sup>333</sup>

Field's *Slaughter-House* dissent, then, was nothing less than an attack on the grant theory of the corporation itself. Though the monopoly provision was the one that he clearly found the most unjust, the argument Field presented would apply to any privilege granted to a corporation. Since incorporation is, by its very nature, a grant of economic privilege, it would seem that the Associate Justice was coming out against the very practice of incorporation itself. Justice Miller's majority opinion, however, was entirely correct in noting that the ability of a state to grant such privileges through the corporate charter was a matter of settled law. Thus Field's objection to the Louisiana charter had to be based upon Federal rights guaranteed by the new Fourteenth Amendment.

Field's dissent agreed with the majority opinion in its broad outlines: both posited that the purpose of the Fourteenth Amendment was to guarantee Federal, and not state, rights. The majority opinion had not denied that the Fourteenth Amendment restricted the states' ability to compromise Federal rights, but had narrowed the scope of the relevant privileges and immunities to the point of leaving almost no realistic chance that a state would ever violate the terms of the amendment. Field, however, found far more rights for that amendment to protect than did Miller. His rather expansive conception of Federal privileges and immunities contains "those which of right belong to the citizens of all free governments," a phrase Field borrowed from Justice Bushrod Washington's circuit court decision in the 1823 case *Corfield v. Coryell*. This characterization had become influential among jurists, but was not binding on the Supreme Court because it had been decided in a lower venue. (Miller had cited it in his decision, but rejected its authority, claiming that Washington's description was a delineation of state, rather than Federal, rights.) Judge Washington had described the extension of the term "privileges and immunities," which also appears in Article IV of

the Constitution, as “more tedious than difficult to enumerate,” before giving an expansive but non-exhaustive list of such privileges.

They may, however, be all comprehended under the following general heads: Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole.<sup>334</sup>

Arguing that Washington’s broad understanding of privileges and immunities “appears to me to be a sound construction of the clause in question,” Field applied this definition more specifically to the *Slaughter-House cases*. Among these rights “must be placed the right to pursue a lawful employment in a lawful manner, without other restraint than such as equally affects all persons.”<sup>335</sup> On this reasoning, the Louisiana statute is obviously unconstitutional.

The privileges and immunities of citizens of the United States, of every one of them, is secured against abridgment in any form by any State. [sic] The fourteenth amendment places them under the guardianship of the National [sic] authority. All monopolies in any known trade or manufacture are an invasion of these privileges, for they encroach upon the liberty of citizens to acquire property and pursue happiness.<sup>336</sup>

Field was not terribly rigorous in delineating the legal grounding for these economic rights. Though he does argue that monopolies run afoul of the common law, he offers no rebuttal to Miller’s claim that chartered corporations are firmly rooted in that tradition. Field seemed more comfortable grounding these economic rights in natural law; under this conception, human beings have rights simply by virtue of the fact of being human beings. All others, including social and political organizations, are required to respect those rights under all circumstances. The Fourteenth Amendment, he wrote, “was intended to give practical effect to the declaration of 1776 of inalienable rights, rights which are the gift of the Creator, which the law does not confer, but only recognizes.”<sup>337</sup> Such an interpretation of the Fourteenth Amendment would give it sweeping powers

indeed, and Field's decision validated Miller's concern that the success of the minority opinion would have essentially ended the American experiment in federalism. Moreover, even if the purpose of the Fourteenth Amendment had been to enact such a revolution, the rights mentioned in the Declaration of Independence—which pointedly supplants the Lockean “life, liberty and estates” with the more humanitarian “life, liberty and the pursuit of happiness”—do not include these economic rights of which Field wrote.

Rather than specific legal scrutiny, then, Field's insistence on the existence of these rights reflects a trait of character. McCloskey wrote of Field that his “belief that there *were* eternal verities, that they were absolute and unshaded, and that he was endowed with special insight into their nature—this belief never wavered.”<sup>338</sup> Indeed, his belief in such truths—such as the unalienable right to pursue a profession—seemingly trumped even his political convictions. As a states-rights Democrat, one might think that Field would be opposed to the expansion of the Federal mandate to invade the prerogatives of the states. Yet, McCloskey points out, “[e]vidently, the desirability of protecting economic rights outweighed in his mind the disadvantage of detracting from state autonomy. It is also important to observe that he was attempting to bring a substantive protection of economic liberty into the Constitution by way of the privileges or immunities clause.”<sup>339</sup> One should add to this list of seeming inconsistencies the fact that a conservative who believed in the primacy of economic and property rights pursued a line of argument that would have had the potential to invalidate the vast majority of corporate charters in the United States at that time.

The decision in *Slaughter-House cases* was unpopular from nearly the moment it was issued. Miller's biographer summarized the literature well in claiming that “[o]ther than *Dred Scott v. Sandford*, *Plessy v. Ferguson*, and *Roe v. Wade*, few opinions have received more withering attacks from historians and legal scholars.”<sup>340</sup> Though historians

have more recently begun to re-evaluate the decision in light of the terrible public health conditions in New Orleans and the precarious position of African Americans in Louisiana,<sup>341</sup> the overall take on the opinion remains that the Court stepped in to stem the tide of Reconstruction by limiting the role of the Federal government in demanding respect for civil rights from the states. Though the immediate effect of the decision was one of, in the graphic words of legal scholar Akhil Amar Reed, “strangling the privileges-or-immunities clause in its crib,”<sup>342</sup> its medium-term legal significance was that those seeking to establish Federal protections for civil or, for our purposes, property rights, began to turn to the due process clause in order to achieve the same ends.

In this context Field’s *Slaughter-House* dissent appears as an important step in the development of the American corporation. Though Miller’s decision affirmed the grant theory, Field’s dissent, had it been successful, would have scuttled it almost in its entirety. As a conservative who was friendly to the corporation, however, the justice would have to figure out how to square his conviction that the Federal government should protect innate human economic rights with the obvious fact that the very existence of corporations is dependent upon privileges bestowed by the government. By the time of *Santa Clara*, he would have done so.

#### **“WE ARE ALL OF THE OPINION THAT IT DOES”**

The case of *Santa Clara County v. Southern Pacific Railroad* was fundamentally a tax case. California law stipulated that the owner of a mortgage on a property was liable for the taxes on the portion of that property that he/she, by virtue of holding the mortgage, technically owned. Thus an individual who had just purchased a mortgage on a home, for example, might own only the fraction of the house that was covered by the initial down payment; therefore that person was only liable for the taxes on that percentage of the house, with the lender responsible for the remainder. The California

constitution, however, specifically singles out “railroad and other *quasi* public corporations”<sup>343</sup> as an exception to this policy. Should the land in question be the property of a corporation, then that company would be liable for the tax on the entire value of that piece of real estate, whether mortgaged or not. Were a railroad and an individual to find themselves in exactly the same situation with regard to an identically valued piece of land and an equivalent mortgage, the railroad would owe more taxes on that land than the individual would. (The respective loan agents, however, would be in exactly the opposite positions: the one who held the mortgage to the railroad’s land would owe no taxes at all.) The railroads, understandably, believed this state of affairs to be unjust, and brought to trial many arguments to that effect, many of which alleged that the state of California had violated their guarantee of equal protection of the laws.

Though the Supreme Court did find in favor of Southern Pacific in the *Santa Clara* case, it did not do so on the grounds that the company had been discriminated against by virtue of being a corporation rather than an individual. Instead, it was decided on narrow, technical grounds: that California’s initial assessment of the value of the railroad’s property had been inflated because it included the value of fences that were the property of the neighboring landowners. Writing for the Court, however, Justice John Marshall Harlan clearly stated that the decision carried no greater weight than this specific action. “As the judgment can be sustained upon this ground it is not necessary to consider any other questions raised by the pleadings and the facts found by the court.”<sup>344</sup>

Given the details of the case, it seems unlikely that this decision would serve as the basis for a new tradition of Constitutional interpretation. This is because the precedent-setting declaration did not appear in the actual decision; instead it appears in the case’s headnotes, which usually include summaries of the facts relating to a case and

other useful, but not essential, information. In the *Santa Clara* decision, however, the headnotes contained the following note under the heading “prior history”:

One of the points made and discussed at length in the brief of counsel for defendants in error was that “Corporations are persons within the meaning of the Fourteenth Amendment to the Constitution of the United States.” Before argument, Mr. Chief Justice [Morrison] Waite said: “The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does.”<sup>345</sup>

Since the Court never ruled on this interpretation as part of its decision, it should not have set a precedent. Nonetheless, the case did come to exert significant influence over subsequent legal interpretations of the role of the corporation.

After *Santa Clara*, corporations were entitled to Fourteenth Amendment protections under U.S. law, and the Supreme Court has consistently reaffirmed this finding until the present day.<sup>346</sup> Four years after the decision the Sherman Anti-Trust Act included the definition “[t]hat the word ‘person,’ or ‘persons,’ wherever used in this act shall be deemed to include corporations and associations.”<sup>347</sup> Nearly a half century after the decision, Supreme Court Justice Hugo Black unhappily acknowledged this new reality in an important dissenting opinion. “Of the cases in this court in which the Fourteenth Amendment was applied during the first fifty years after its adoption, less than one-half of one percent invoked it in protection of the Negro race, and more than fifty percent asked that its benefits be extended to corporations.”<sup>348</sup>

Importantly, considering a corporation as a “person” for Fourteenth Amendment purposes requires a major rethinking of the very nature of these associations. The grant theory had been based upon the assumption that an association of individuals could be endowed with specific powers, and even a collective identity, upon the grant of such by the state. Regardless of the metaphysical issue of whether such an entity is accurately

described as a “person,” an entity that was entitled to the benefits of the equal protection clause and the due process clause is one to which the criteria of public purpose, and the attendant expectation of greater regulation, could not be applied. The legal theory needed to catch up with the actual practice: the trend toward general incorporation laws had meant that the vast majority of corporations were no longer held to such high standards. Rather than the quasi-public entity that it had been for much of the nineteenth century, the corporation had become, states Hovenkamp, “nothing more than a device for assembling large amounts of capital so it could be controlled efficiently by a few active managers.”<sup>349</sup>

Yet an important question remains. Why did the Court choose personhood as the legal concept to adapt to this new reality? Had it refused to extend Fourteenth Amendment protections to corporations, another business form without the historical or theoretical baggage of the corporation—such as the limited partnership—might have arisen to solve the problems of capital formation more effectively. Given the presumably unanticipated effect of this otherwise obscure railroad tax case, speculation has arisen with regard to the motivation for inclusion of the headnote in the *Santa Clara* decision. The unorthodox and seemingly surreptitious manner in which the doctrine of corporate personhood made its way into the decision had convinced some in the past—most notably historians Charles and Mary Beard<sup>350</sup>—of the existence of what came to be called the “conspiracy theory” of the Fourteenth Amendment. It suggests that Southern Pacific attorney Roscoe Conkling, who had formerly served as a U.S. Senator from New York and a member of the committee that drafted the language of the Fourteenth Amendment, had intentionally inserted the term “person” rather than “citizen” so that corporations would later come under its purview. Most historians today consider the issue as having been put to rest by the work of Howard Jay Graham,<sup>351</sup> and legal historian Akhil Reed



Amar suggests that good reasons existed for employing the term “person” rather than “citizen.” He argues that the amendment’s primary authors, Congressman John A. Bingham and Senator Jacob Howard insisted that “the privilege-or-immunities clause would protect only *citizens* from oppressive state action. A separate due-process clause was thus needed to make clear that all ‘persons’—even aliens—were entitled to basic rights of procedural fairness. The citizen/person distinction took on particular significance because Taney’s *Dred Scott* opinion had insisted that the federal Bill of Rights protected only ‘citizens’ and that free blacks, as noncitizens, had no rights under the Bill.”<sup>352</sup> Regardless of the reason for the declaration of “corporate personhood,” the important question remains: what logic could lead, under any circumstances, to the justices declaring, unanimously and without argument, that corporations are persons?

Perhaps the best answer to that question comes not from the Supreme Court, but from the court of appeals that had heard the case earlier. In a strange twist of nineteenth century legal custom, Supreme Court justices additionally rode circuit as Chief Judges of the Appellate Court. Presiding over the court that had heard the *Santa Clara* case was none other than Stephen J. Field, who had previously dissented so strongly in the *Slaughter-House cases*. In his capacity as *Santa Clara* appellate judge, Field had written a lengthy and detailed decision in which he strongly argued that the Fourteenth Amendment should apply to corporations as well as persons. Indeed, his finding in favor of the railroad was based largely on that premise.

Though the Supreme Court agreed with Field’s conclusion, it did not clearly accept or reject the reasoning that led to that holding. Referring to Southern Pacific’s argument that the value of the fences was improperly included in the value of the railway, Justice Harlan wrote “[i]f these positions [that fences should be included in the assessed value of a property] are tenable, there will be no occasion to consider the grave questions

of constitutional law upon which the case was determined below [in the appellate court]; for, in that event, the judgment can be affirmed upon the ground that the assessment cannot properly be the basis of a judgment against the defendant.”<sup>353</sup> Since the Court did, however, affirm the idea that the Fourteenth Amendment applied to corporations, one might look to Field’s earlier decision for clues as to its reasons.

The decision is an impassioned thirty-page diatribe whose main purpose is to warn against the dangers of governmental oppression that will result from failing to treat corporations equally under the law. The first part of the decision emphatically makes the points that the California tax law *does*, in fact, impose an unequal burden upon railroad corporations. “In fixing...the liabilities of parties to pay the tax assessed and levied upon properties subject to a mortgage...a discrimination is made between the property held by railroad and *quasi* public corporations, and that held by natural persons and other corporations.”<sup>354</sup> To make the point perfectly clear, Field draws several different hypothetical scenarios, all making the same point: that identically situated property-owners would face different tax liabilities depending on the legal structures that characterized their ownership.

A natural person and a railroad company own together a parcel of property in equal proportions, subject to a mortgage. In estimating the value of the undivided half belonging to the natural person, half of the amount of the mortgage is deducted. In estimating the value of the undivided half belonging to the railroad company, no part of the mortgage is deducted. The discrimination is made against the company, for no other reason than its ownership.

Field’s claim here is representative of a significant break that has taken place in the prevailing theory of the corporation. Clearly the justice is correct to point out that, in this example, California law treats the natural person differently than the corporation. But such a distinction can only fairly be called “discrimination” if there is some reason to

assume that corporations and individuals should be treated similarly. In suggesting that the state has an obligation to treat corporations in the same fashion as individuals, Field is directly contradicting the logic of Marshall's *Dartmouth College* decision. If incorporation is a contract between the state and the individuals who form the corporation, as that decision clearly articulated, then any terms that the state imposes as part of that contract (i.e., *prior to* incorporation), even unequal tax rates, are appropriate, since no one is forced to accept them.

In perhaps the decision's most rhetorically passionate section, Field indulges in the same slippery-slope argument that he used in the *Slaughter-House* dissent.

To-day railroad companies are under its ban, and the discrimination is against their property. To-morrow it may be that other institutions will incur its displeasure. If the property of railroad companies may be thus sought out and subjected to discriminating taxation, so, at the will of the state, by a change of its constitution, may be the property of churches, of universities, of asylums, of savings banks, of insurance companies, of rolling and flouring mill companies, of mining companies, indeed, of any corporate companies existing in the state. The principle which justifies such a discrimination in assessment and taxation, where one of the owners is a railroad corporation and the other a natural person, would also sustain it where both owners are natural persons. A mere change in the state constitution would effect this if the federal constitution does not forbid it. Any difference between the owners, whether of age, color, race, or sex, which the state might designate, would be a sufficient reason for the discrimination...To levy taxes upon a valuation of property thus made is of the very essence of tyranny."<sup>355</sup>

At this point, the justice takes up the question that he seems to recognize is the most daunting to his line of reasoning: whether or not the Fourteenth Amendment even applies to the circumstances of the *Santa Clara* case. The amendment is, quite simply, the only guarantee against such governmental abuses. Two points need to be made here, both more or less in Field's defense. First, many contemporary commentators—most of them on the left—have been merciless in their criticism of the *Santa Clara* decision, claiming

that it declared that corporations are persons under the law. Such a position is rather understandably offensive to the self-image that human beings tend to hold, and would besides be a rather foolish one to make. Yet neither the appellate nor the Supreme Court decision makes this claim, ruling that corporations are entitled to Fourteenth Amendment protections, rather than that they are persons. This finding is both less offensive and, quite frankly, more reasonable than is often assumed. Though corporations are obviously not people, and just as clearly do not possess all the rights of human beings, whether or not they possess the specific right to equal protection of the laws is a question that is not outrageous to consider.

Secondly, like Miller in the *Slaughter-House* cases, Field was very much aware that the purpose of the Fourteenth Amendment was to protect former slaves. He does not crassly ignore that fact, but instead follows the logic of the amendment itself: African Americans are most in need of a guarantee of fairness at that particular point in history, but that does not mean that they are the only ones who should ever receive such assurances.

The amendment was adopted soon after the close of the civil war [sic], and undoubtedly had its origin in a purpose to secure the newly-made citizens in the full enjoyment of their freedom. But it is in no respect limited in its operation to them. It is universal in its application, extending its protective force over all men, of every race and color, within the jurisdiction of the states throughout the broad domain of the republic.<sup>356</sup>

Given, then, that the laws must be applicable to all relevant parties or be inherently unjust, the question still remains as to who should receive the benefits of this guarantee. Certainly, not all American entities receive this assurance: it does not apply, for example, to children, animals, works of art, or natural resources; none of these exceptions, however, imply that the amendment is ineffectual or has been violated. Thus the significant question with regard to the legal status of the corporation *vis à vis* the

Fourteenth Amendment is whether, as an existing entity, it is more similar to an adult human being in full command of all of his/her faculties, on the one hand, or, say, something like the Grand Canyon or Golden Gate Bridge, on the other.

Justice Field's answer was, in short, that a corporation is not only *like* a natural person, but is *in fact* such an entity. Yet he makes this leap not by endowing a corporation with personhood, but essentially by refusing to see the corporation at all. As a shorthand device for treating the interests of the partners, or stockholders, the concept of incorporation has some uses. But this convenient legal fiction, in Field's view, should not obscure the fact that what is at stake when considering corporate property was really the property of the individual owners of that corporation.

Whatever affects the property of the corporation—that is, of all the members united by the common name—necessarily affects their interests...So, therefore, whenever a provision of the constitution of a law guaranties [sic] to persons protection in their property, or affords to them the means for its protection, or prohibits injurious legislation affecting it, the benefits of the provision or law are extended to corporations; not to the name under which different persons are united, but to the individuals composing the union. The courts will always look through the name to see and protect those whom the name represents.<sup>357</sup>

To understand Field's view of the corporation is to see how it is that he can imagine that the Fourteenth Amendment could appropriately apply to it. Field correctly points out that, no matter what the historical origin of the amendment is, for it to be meaningful it must serve as a vehicle to combat discrimination rather than a narrow boost for black Americans. And if corporations are merely collections of individuals, then treating them differently than natural persons is, in fact, denying those individuals equal protection of the laws. "Surely," wrote Field, "these great constitutional provisions...cannot be made to read as counsel contend, 'nor shall any state deprive any person of life, liberty, or property without due process of law, *unless he be associated with others in a*

*corporation*, nor deny to any person within its jurisdiction the equal protection of the laws, *unless he be a member of a corporation.*”<sup>358</sup>

In its ultimate significance, then, Field saw this issue as an important legal battlefield in which what was at stake was not merely the status of the corporation, but that of property itself.

If...the property [held by corporations] can be subjected to unequal and arbitrary impositions, it may for the same reason be taken from its owners without due process of law, and taken by the state for public use without just compensation. If the position be sound, it follows that corporations hold all their property, and the right to its use and enjoyment, at the will of the state; that it may be invaded, seized, and the companies despoiled at the state’s pleasure...But in truth the state possesses no such arbitrary power over the property of corporations. When allowed to acquire and own property, they must be treated as owners, with all the rights incident to ownership...Whatever power the state may possess in granting or in amending their charters, it cannot withdraw their property from the guaranties [sic] of the federal [sic] constitution.<sup>359</sup> [sic]

Two important points emerge here. The first is that Field has supplanted the grant theory of the corporation with an entirely new understanding. He does not see the corporation as an artificial entity created by the state, but only as a sort of placeholder for individual interests. Of course, if this were an accurate conception of the corporation, then extension of Constitutional rights would be entirely justified. But is it? If corporate status provided only the rights already guaranteed by the U.S. Constitution, then little motivation would exist for anyone to desire to incorporate. But this desire remains because what remains from the grant theory is the notion that the incorporators are entitled to certain privileges, chief among them limited liability and perpetual life. The effect of the formulation adopted by Field, and by extension the Supreme Court, is to sustain the most important corporate privileges as a consequence of incorporation while limiting many of its obligations—formerly enforced through the state charter—by way of the Fourteenth Amendment.

The second important change here is that Field has succeeded in transforming the Court's conception of the Fourteenth Amendment: his *Slaughter-House* minority had become, in little over a decade, a unanimous majority. Once it has been established that corporations are entitled to Fourteenth Amendment protections, it is not clear that those protections include a right that places limits on the state's ability to levy taxes. But under Field's very expansive and poorly defined conception of Federal protections, which include "the liberty of citizens to acquire property and pursue happiness," the owners of a corporation that is subject to a separate tax rate experience a violation of their Constitutionally protected right to own property. The specific extent and derivation of these rights is, again, a subject on which Field is not terribly clear. But in enforcing a view of incorporation as a right guaranteed by the U.S. Constitution, rather than a privilege bestowed by the state in exchange for some public purpose, the Supreme Court significantly altered the intellectual terrain of American democratic capitalism. As the size, wealth and power of corporations in the United States increased throughout the twentieth century, these institutions became simply a fact of American life. Those concerned about this development could propose various regulations and reforms, but precious little intellectual space would exist to mount a meaningful theoretical, political or legal challenge to the existence, purpose or justification of the corporation itself.

#### ***SANTA CLARA IN THE GILDED AGE***

In citing and exploring the *Santa Clara* decision to support my conception of democratic capitalism, I am suggesting that the Court's finding represents not only its own views, but also illuminates a major strand in Gilded Age thought regarding the corporation. In making this argument I am claiming that many Americans of the late nineteenth century—indeed, most of them who were in a position to weigh in on this debate—believed that individual rights, particularly those regarding property, demanded

the privileges of incorporation. Consequently, government policies should be oriented toward maximizing opportunities and minimizing burdens for corporations themselves. This argument, however, runs afoul of the criticism that consistently bedevils the judiciary: that the courts, or specifically in this case, the Supreme Court, is inherently antidemocratic.

This argument is common today in conservative circles, but generally used by any group who feels its agenda is being thwarted by the courts at any given time. According to its tenets, the judiciary is not beholden to a particular constituency and therefore its decisions need not comport with the will of the people. In striking down or employing radical interpretations of legislative acts, the judicial branch can actually act to thwart that will. Since one of the judiciary's important functions is to act as an occasional countermajoritarian political influence, however, a consistent philosophy regarding the place of the judiciary in a democracy is difficult to come by, and I will not offer one here. Instead, I will defend the more modest claim suggested by Jeffrey Rosen's argument regarding the legitimacy of court decisions, that "when the courts act unilaterally, their efforts are likely to be ineffective, to provoke backlashes, and ultimately to threaten the legitimacy of the courts."<sup>360</sup> Conversely, judicial decisions that find or express a consensus about an issue can abet the democratic process by providing a rationale for new policies or merely providing closure on specific issues. Though a decision that can offend modern sensibilities, *Santa Clara* was clearly in the latter camp; it definitively expressed an idea that, in a more amorphous form, justified the economic demands of Gilded Age Americans.

The first point to consider in this regard is that the decision itself provoked no denunciation or controversy. In fact, it was accorded very little reception at all. Reporting the news the next day, for example, the *New York Times* printed a six-



paragraph summary of all the Supreme Court decisions rendered the day before, under the headline, “No Jurisdiction in Polygamy Cases—California Railway Taxes.” *Santa Clara* was in the final paragraph.<sup>361</sup> Field’s earlier appellate decision on the case received a bit more attention from the local *San Francisco Daily Examiner*, but that paper’s headline stated “Value of the Mortgages Must be Assessed to the Holders” rather than anything about the application of the Fourteenth Amendment to corporations.<sup>362</sup> The paper editorialized against the decision, but expressed little consternation about whether or not corporations should be treated as persons. Its concerns, instead, were with the state’s overburdened treasury; the editors hoped that the state will “collect, finally, every dollar that these rapacious corporations owe us.”<sup>363</sup>

More broadly, the Gilded Age is well-characterized as a period in which the pursuit of wealth was predominant in the minds of many Americans, and the corporation was broadly understood as a legitimate and even necessary part of that goal. Though it would be inaccurate to say that all segments of American society welcomed with open arms the rise of the corporation, one must note at the same time that corporate industrialism, in the words of business historian Martin Sklar, “was not only something Americans responded to; since at least the early nineteenth century, it was also something they were doing.”<sup>364</sup>

Certainly many influential Gilded Age thinkers had concerns over the growing power of corporations. Walt Whitman wrote in the 1870s that “[e]xceptional wealth...countless manufactures,...[and] capital and capitalists...form, more or less, a sort of anti-democratic disease and monstrosity.”<sup>365</sup> Nor was such anti-corporate sentiment restricted to the romantic criticisms represented by the poet. The year after the Court decided *Santa Clara*, economist Henry Carter Adams would mock the sort of reasoning that supported that decision, observing that “the tyranny of corporations, which

grew naturally from conditions of 'industrial freedom,' was as grievous as any tyranny ever established by government agency."<sup>366</sup>

But overall, such complaints were in the minority. Many Americans reveled in the power of the new corporation to promote economic and technological change. In the wake of the ascendant Social Darwinism of the period, many agreed with the 1911 claim from Republican vice-presidential candidate, Columbia University president and Nobel Peace Prize recipient Nicholas Murray Butler that "the limited liability corporation is the greatest single discovery of modern times."<sup>367</sup> They saw the corporation as a progressive development in economic life, one to which, in Sklar's words, "society in its sociopolitical, intellectual, and cultural dimensions must adjust...in an appropriate way or suffer regression."<sup>368</sup> John D. Rockefeller saw in corporations the height of human—and even divine—achievement. "The growth of a large business," he reportedly told a Sunday school class, "is merely the survival of the fittest...The American Beauty rose can be produced in its splendor and fragrance which bring cheer to its beholder only by sacrificing the early buds which grow up around it. This is not an evil tendency in business. It is merely the working out of a law of nature and a law of God."<sup>369</sup>

Richard T. Ely was an economist who, along with Adams, founded the American Economic Association in 1885. In 1887, he wrote for *Harper's* a series of articles that focused on the corporation. Though Ely was sympathetic to the labor movement and had flirted with socialism, the pieces are noteworthy for their contention that "corporations are a good thing and ought to be encouraged."<sup>370</sup> Rather than a tool of plutocracy, Ely saw the corporation as a great leveler that would allow those of limited means to participate in industrial and financial life, gradually bringing about "the progress of democracy in industry."<sup>371</sup>

Though Ely might share with Justice Field a reverence for the corporate form, their reasons for this admiration could not be more in opposition. To begin with, the economist's understanding of the corporation was entirely rooted in the grant theory. Seemingly oblivious to the Supreme Court's holding of a year before, he noted that corporations are "creatures of the state," that are "endowed by sovereign power" with unique abilities, and stressed that a governmental body is justified in creating such bodies "only to promote the welfare of the people; otherwise its action would be inexcusable." Since the state "dare not create an artificial person which may injure the people...[t]here is no limitation whatever to the right of the state to determine the character of corporations."<sup>372</sup> Secondly, where Field saw the corporation as an institutional instantiation of individual rights, Ely thought that "the evolution of the race has reached that point where the supremacy of the individual is neither needed nor desired," and viewed the corporate entity as the embodiment of a new communalism. Rejecting the notion that "co-operation either through some public body or through some voluntary agency involves curtailment of individual rights," Ely argued that corporations represent the culmination of the spirit of "fraternalism" over that of "paternalism," and that they embody economically the democratic political principle of which Americans are justly proud.<sup>373</sup>

Ely did not claim that corporations are free from problems. He notes the frequent antagonism between capital and labor, as well as the many unfair competitive benefits that might accrue to large corporations. But Ely specifically argues in favor of "these useful industrial forms," and against the notion that "there are evils inseparably connected with corporations as they exist today in the United States."<sup>374</sup> While abuses of the corporate structure certainly do exist, they can all be traced, in Ely's view, to the exploitation of natural monopolies. Thus the problem is not with corporations *per se*, but

with the “application of the principles of private business concerns to what are in their nature essentially public undertakings.”<sup>375</sup> Corporations, argues Ely, can greatly aid in the hoped-for extension of industrial democracy as long as their principles are restricted to their proper sphere, which is to say, outside of the realm of unlimited natural monopoly.

Thus even one whose reasoning, positions and values were significantly out-of-step with those of the *Santa Clara* Court resisted an attack on corporations themselves. By and large, the mainstream of political and intellectual classes in the Gilded Age United States rejected any program that would significantly restrict their growth and influence. Corporations had already become an essential part of American economic life: Ely estimated in the *Harper’s* series that one-quarter of the nation’s wealth is held by corporations, and in his *Santa Clara* appellate decision, Field claimed, perhaps less plausibly, that corporate property “embraces the greater part of the wealth of the country.”<sup>376</sup> Regardless of the correct figure, the important point is that the corporation had become a fixture of the economic and political landscape, and that American political thinkers viewed their primary task as the construction of a justification for them. The significance of *Santa Clara* lies less in Justice Field’s somewhat tortured logic (which, we should note, has not to this day been overturned) than in the fact that Americans wished to take advantage of the economic and technological growth that, to their eyes, could only be achieved through the pooling of capital represented by the corporation. In that sense, then, the decision can fairly be said to represent the will of the people.

#### **CONSEQUENCES OF THE PROPERTY CONCEPTION**

*Santa Clara*’s holding that Constitutional protections for corporations emanated from the property rights of its shareholders ushered in a new age of jurisprudential permissiveness with regard to the these entities. Noting that in 1897, the Court

invalidated a state law on the basis of “liberty of contract,” Robert McCloskey suggested that “this holding completed the process of constitution-making that had begun with the dissents in the [*Slaughter-House cases*]. Ten years before, the Court had conceded, rather offhandedly, that corporations were ‘persons’ within the meaning of the Amendment, and that concession was now seen to be of epic importance and of incalculable value to the business community...[I]t meant that business, whether incorporated or not, was no longer wholly at the mercy of the popular will.”<sup>377</sup> Though many in the subsequent Progressive Era would rail against the power of corporations, much of this agitation toward took place against the assumption that corporations serve as a foundation of the nation’s economy.

Yet the decision had other, unintended, consequences as well. More than merely the articulation of *laissez faire* values, “corporate personhood” was a response to a problem or, more accurately, two interrelated problems. According to Herbert Hovenkamp, the first issue was how to determine that property held in the name of the corporation would receive the same Constitutional protections as property held in other arrangements; in other words, incorporation should not actually *weaken* such protections for those who held property in this form. This concern is a valid one that would presumably meet with few objections. But the second issue is both more complicated and, potentially, more troublesome. Once it has been determined that corporate property is also subject to Constitutional protections, it is unclear who specifically is able to claim or utilize these rights. In securing property rights to the corporation by declaring it a person, rather than through some other legal mechanism, the Court tipped the balance toward the company’s managers over its shareholders.

The doctrine that a corporation is a constitutional person meant that the corporation's directors or managers had the power to assert the corporation's constitutional claims. The far less cited corollary was that

the shareholders *lacked* standing to assert these rights. Indeed, had the doctrine of corporate constitutional personhood not been developed, the result certainly would not have been that corporate property was unprotected by the fourteenth amendment. Rather, it would have been that an unconstitutional injury to corporate property is an injury to the constitutional rights of shareholders. Thus an important effect of the *Santa Clara* decision...was to enlarge the gap between ownership and control that characterized the development of the classical corporation. Managers, not shareholders, should have a generally exclusive power to assert the corporation's constitutional rights.<sup>378</sup>

Moreover, the *Santa Clara* ruling was specifically *not* based on the notion that the corporation was itself a Constitutionally-protected entity, but instead on the claim that the shareholders themselves deserved protection of their property rights.\* Thus the Constitutional rights of corporate managers to perform the functions associated with ownership were grounded upon the property rights vested in the individual owners. Such a situation divorced commonsensical notions of ownership from the rules that would govern the management of these very powerful and wealthy institutions.

By the early twentieth-century, the effects of the separation of management from control were becoming clear. The most direct criticism of this phenomenon came from Adolf Berle and Gardiner Means in their 1932 work *The Modern Corporation and Private Property*. They noted that the Liberal concept of private property is an idea that took shape in the eighteenth century and no longer adequately describes the forms that modern property might take. Since respect for the freedom of property is an inadequate justification of the corporation in its contemporary form, they argued, we might be wise to rethink the privileges and obligations of the modern corporation.

The typical business unit of the 19<sup>th</sup> century was owned by individuals or small groups; was managed by them or their appointees; and was, in the

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\* The now-prevalent legal doctrine that the corporation is a “natural entity” would not develop until the early twentieth century, after the ability of managers to represent corporate interests already settled. See Horwitz, Morton J. “*Santa Clara* Revisited: The Development of Corporate Theory.” *West Virginia Law Review* 88, no. 2 (1985): 173-224.

main, limited in size by the personal wealth of the individuals in control. These units have been supplanted in ever greater measure by great aggregations in which tens and even hundreds of thousands of workers and property worth hundreds of thousands of individuals, are combined through the corporate mechanism into a single producing organization under unified control and management.<sup>379</sup>

The book begins by pointing out that corporations had consolidated not only their own wealth, but the ownership of a great deal of the nation's property: at the time of its writing, for example, twenty-two percent of the nation's total wealth was controlled by the 200 largest corporations.<sup>380</sup> Berle and Means argued that this unprecedented concentration of corporate wealth signified a sea change in economic conditions. Since the predominant understandings of property date to the eighteenth century, it is incumbent upon theorists to question whether or not the prevailing ideas of property are germane to the conditions that actually hold.

The owners of the modern corporation are, by and large, stockholders who have no desire to actually run the company and no way to institute their decisions if they did. This is a very different situation than the one that applies to someone who owns, say, a plot of land: in most circumstances, that person exerts his or her will directly over that property. On the other hand, those who do exercise such dominion over the corporation—the managers of the business—do not stand to realize any change in their own economic status by the successful (or incompetent) running of the business. This is a marked shift from the patterns that characterized the past.

In the past, the ownership of business enterprise...has always, at least in theory, involved two attributes, first the risking of previously collected wealth in profit-seeking enterprise; and, second, the ultimate management of and responsibility for that enterprise. But in the modern corporation, these two attributes of ownership no longer attach to the same individual or group. The stockholder has surrendered control over his wealth. He has become a supplier of capital, a risk-taker pure and simple, while ultimate responsibility and authority are exercised by directors and

“control.” One traditional attribute of ownership is attached to stock ownership; the other attribute is attached to corporate control. Must we not, therefore, recognize that we are no longer dealing with property in the old sense? Does the traditional logic of property still apply? Because an owner who also exercises control over his wealth is protected in the full receipt of the advantages derived from it, must it *necessarily* follow that an owner who has surrendered control of his wealth should likewise be protected to the full?<sup>381</sup>

Obviously the answer that Berle and Means give to these rhetorical questions is “no.” Property as traditionally understood conveys the notion of ownership and control. Someone who owns a corporation, however, has no control over it, while those who control a company—its managers—do not, at least in that function, lay any claim to ownership of it.

In each of the situations to which these fundamental concepts [of classical economic theory] refer, the Modern Corporation has wrought such a change as to make the concepts inapplicable. New concepts must be forged and a new picture of economic relationships created.<sup>382</sup>

Berle and Means briefly sketched what they believe these new concepts might portend. Since owners have abrogated one of their traditional roles “by surrendering control and responsibility” of their corporate property, they have consequently “surrendered the right that the corporation should be operated in their sole interest,” thereby releasing “the community from the obligation to protect them to the full extent implied by the doctrine of strict property rights.” But the fact that managers have taken on some of the prerogatives of ownership does not mean that corporate interests default to those of the managers. Instead, the two groups have “cleared the way for the claims of a group far wider,” as “the community” is now “in a position to demand that the modern corporation serve not alone the owners or the control but all society.” Under this conception, “the ‘control’ of the great corporations should develop into a purely neutral technocracy, balancing a variety of claims by various groups in the community.”<sup>383</sup>



Though the understandings of corporate property that motivated the program of Berle and Means in 1932 are fundamentally similar to those that hold today, history has not seen the writers' recommendations put into effect. A contemporary writer and activist, however, has reinvigorated and updated some of their criticisms. Marjorie Kelly, the editor and co-founder of *Business Ethics* magazine, has addressed this issue through considering the question that most who dwell upon this question seem to want to avoid: the metaphysical concern of what exactly the corporation is. The everyday, "common-sense" viewpoint would agree with the *Santa Clara* holding that the corporation is a piece of property, yet this interpretation, argues Kelly, carries with it certain assumptions, none of which seem terribly problematic at first glance. "Since stockholders own corporations, implicitly (1) the corporation is an object that can be owned, (2) stockholders are sole masters of that object, and (3) they can do what they want with 'their' object."<sup>384</sup>

Though this statement seems straightforward enough, Kelly's careful unpacking makes it clear that it is fraught with complications. First of all, the notion that a corporation can be owned is ontologically problematic. What kind of thing is a corporation? It certainly has assets, like buildings, land, trucks and the like, that make sense to own. But the corporation itself *owns* those things, and is therefore different from them. What, then, is the corporation? Kelly argues that the social, political, economic and legal construction that we call a corporation is, in fact, a "human community."<sup>385</sup> It is more like, say, an Elk's Lodge or a monthly reading group than it is like a pickup truck. But these things make little sense as objects that can be owned. Perhaps, suggests Kelly, the corporation is not well-understood as property at all.

What then happens if we think of a corporation as a human community rather than as a piece of property? Immediately, we must question the second and third propositions above. If the corporation is an object that can be owned, then it makes sense that the

owners should control it. But if it is a human community, then the primacy of stockholders becomes more problematic. They provide the capital to make the business work, and that is important. But it is not necessarily more essential than the labor that makes the business work, or local community that makes the business work, or the natural resources that make the business work. Anyone associated with any of those entities has a stake in the corporation, and it is only the social construction of the corporation as property that makes the primacy of the stockholder appear naturally primary to that of other stakeholders. “Private property owners have assumed sovereign power economically, not by vote, but by ancient prejudice.”<sup>386</sup>

Following this line of reasoning to its logical conclusion, Kelly hones in on the central issue. Given that stockholder primacy is rooted in ideas about ownership that no longer make sense when held up to the light of day, why do they persist? The answer, she effectively argues, is wealth discrimination, and distinctions on that basis should have no more place in our contemporary and allegedly enlightened society than should privileges based upon race, gender, religion, sexual orientation and the like. Thus while Field argued that respect for the most basic American rights requires a deference to the corporation, Kelly believes that the mere existence of rights for corporations bespeaks a failure to recognize those of actual human beings. Her overall conclusion—that corporations have many constituencies beyond their owners—is very similar to that of Berle and Means. Kelly does offer more specific measures than the earlier writers, though she is clear that none of her proposed remedies—a Constitutional amendment defining the corporation, fixed-length corporate charters, provisions for employees to vote on corporate relocations, etc.—is a panacea. Instead, she sees the central problem with the corporation as an entrenched prejudice in the American mind in favor of the

wealthy. For Kelly, decisions like *Santa Clara* serve not only to express but to reinforce that valuation.

The Supreme Court's finding in *Santa Clara County v. Southern Pacific Railroad* that corporations are entitled to the protections of the Fourteenth Amendment is, I have argued, representative of a major concern of Americans in the Gilded Age: the viability and growth the corporation. Though corporations are hardly creatures of the invisible hand and prevailing nineteenth century morays viewed them as quasi-public entities, jurists eventually constructed new theories that could allow them to operate with a much wider degree of latitude. Though these interpretations have bequeathed problems to later generations, this is not because the Court acted against the spirit of democratic capitalism. In formalizing a flawed but popular set of understandings, the Court only supplied an intellectual justification for values and practices that American had already decided to adopt.

## **Conclusion: The Twentieth Century**

The development of democratic capitalism in the United States did not, of course, conclude with the end of the nineteenth century. Corporations continued to press upon the gains they made during the Gilded Age. John D. Rockefeller's attorney, Samuel C.T. Dodd, created the Standard Oil Trust in 1882. Many others quickly followed in employing this new business form, which was specifically invented to avoid state laws against business concentration. The American Cotton Oil Trust was founded in 1884, the National Linseed Oil Trust the following year, and the Whiskey Trust in 1887; eventually some five thousand companies would organize into approximately 300 trusts.

Even in the favorable intellectual currents of the Gilded Age, many Americans began to feel that corporations had pushed their advantages too far. At the same time, a strong undercurrent of resistance to the growing power of business had always characterized this period. Between 1880 and 1900, more than 200,000 of the nation's workers participated in more than one thousand strikes; the Haymarket Riot (1886) and the Homestead Strike (1892), in particular, captured national attention. The publication of Upton Sinclair's bestselling *The Jungle* in 1906 brought the terrible working conditions in the meatpacking industry, as well as the disgusting character of much of the food supply, to the attention of the nation. The horrific 1911 Triangle Shirtwaist Company fire killed 146 workers, after the exits had been blocked and doors locked to prevent workers from taking unauthorized breaks. These developments, among many others, fueled a widespread perception that businesses had overreached the fairly generous mandate given them by the Federal government.

As a result, one of the major themes of the subsequent Progressive Era was the regulation of many aspects of corporate practice. Congress established the Interstate

Commerce Commission in 1887 and passed the Sherman Anti-Trust Act in 1890. Largely in response to the influence of *The Jungle*, in 1906 it established the modern Food and Drug Administration to monitor conditions of the private production of the nation's food supply. Under the administration of Theodore Roosevelt, the Federal government brought suit against some 44 alleged monopolies, establishing the president's reputation as a "trustbuster." In 1904, the Supreme Court broke up a holding company owned jointly by the two biggest railroads, and seven years later it would order the dissolution of the Standard Oil trust itself and rule against the predatory pricing of the American Tobacco Company. Finally, the year 1914 would see Congress establish the Federal Trade Commission and, through the Clayton Anti-Trust Act, forbid discrimination in pricing.

This cycle of expansion and reform established that the corporation, though somewhat tamed, would be an essential and powerful player in the nation's economic future. The pro-business attitude of the Coolidge and Hoover administrations combined with the booming economy of the 1920s to give the appearance that this compromise had put the country on exactly the right track. All of that would change in October 1929, when the stock market crashed. The response to the Great Depression that followed would define the next major shift in the construction of American democratic capitalism.

That reaction took the form of Franklin Delano Roosevelt's New Deal. An unprecedented commitment of Federal resources to the solution of problems in the private economy, the New Deal would redefine the common understanding of the relationship between government and economy in the United States. In particular, the fact that perhaps its most pressing goal was the reduction in unemployment signaled two important developments. The first is the republican ideal was dead. A lack of jobs can constitute a nationwide crisis only when the act of working for another person or

company had become the normal mode of economic existence. No longer resonant for Americans, even as an ideal, was a self-description characterized by a self-sufficient and virtuous agriculturalism, and the future grounding of democratic theory would have to incorporate that fact. Secondly, the people of the United States, from that point forward, began to hold the Federal government accountable for the performance of the national economy. “Our greatest primary task,” declared Roosevelt in his first inaugural address, “is to put people to work.”

The nature of a democracy is such that the government is responsible for any tasks with which its constituents charge it. But the now-commonplace assumption of those who cast Herbert Hoover out of office—that the government should do something that would lead the economy to generate jobs—is remarkable in its implications for a capitalist economy. If the market is signaling that it does not need workers, then attempting to foist some upon it can only compromise its ability to provide the most efficient distribution of goods and services. Thus the use of government powers for the purpose of creating jobs does the same violence to the principles of market theory as does harnessing those powers to any other goal, including the attainment of economic equality that has traditionally been the identifying mark of more radical social theories. Thus the intellectual challenge that faced American democratic capitalism throughout most of the twentieth century was not its contrast with republicanism, but with socialism.

Significant in this regard was the thought of Henry Wallace. Called by Louis Hartz “the most articulate and reflective of the New Dealers,”<sup>387</sup> Wallace served, in turn, as Secretary of Agriculture, vice-president and Secretary of Commerce under Roosevelt and Truman. Early in his career, he had articulated his vision of capitalism in his book, *Agricultural Prices*.

Of course, the law of supply and demand never has been repealed and never will be repealed. Instead of trying to repeal it, we should try to secure the best type of price-fixing machinery thru which this law may work. Man has not repealed the law of gravitation, but has devised such machines as automobiles, airplanes, etc. thru which he accomplishes his purposes notwithstanding.<sup>388</sup>

This non-socialist “progressive capitalism,” as he called it, would later prove a perfect fit for the New Deal. On October 28, 1944, Roosevelt committed the resources of the nation’s economy to providing full employment by the end of the decade. Wallace’s 1945 book *Sixty Million Jobs* provides perhaps the best summary of the new philosophy of democratic capitalism that the Depression and New Deal had wrought.

For Wallace, unemployment was not the unfortunate byproduct of economic liberty, but its greatest threat. “[T]he full-employment problem...is the problem of the preservation of our democratic free-enterprise system.”<sup>389</sup> And the solution to this problem is to be found in two developments. The first is consumerism. Only if the polity recognizes and actively encourages the circularity by which the employee of one firm can buy products from another one can capitalism survive. “To be good customers they must be steady customers—and to be steady customers they must have steady jobs. It is a seamless web of cause and effect—an economic one world.”<sup>390</sup>

The second development is a stronger relationship between government and commerce. Wallace did not view this suggestion as emblematic of an exotic or foreign socialism, but as part and parcel of the nation’s intellectual and political history. The goal of working out “methods by which an ounce of government stimulation, or an ounce of government participation, would result in a pound of private initiative,” is one he attributed to Alexander Hamilton. Yet Wallace believed that the modern practice of this idea can transcend the limitations of its origins. “[W]e have progressively applied this

line of action to broaden the economic base for the benefit of the many, instead of limiting it to the privileged few as Hamilton always advocated.”<sup>391</sup>

In adopting Hamilton’s belief “that our democratic government has the definite responsibility of stimulating our free-enterprise system, not just in behalf of the general welfare, but also to keep free enterprise continuously a going concern,”<sup>392</sup> Wallace argued that he is submitting to neither the undemocratic elitism of the early national project nor the more contemporary socialism that would curtail economic freedom. Instead, he positioned the New Deal commitment to full employment as a quintessentially American idea representing the “proper balance between liberty and control, between stimulating full employment and keeping free enterprise free.”<sup>393</sup>

The specific policy prescriptions that flowed from this analysis were never adopted. Though Congress did eventually pass a Full Employment Act in 1945, it was a toothless compromise bill that put in place no significant economic infrastructure. Moreover, the thrust of *Sixty Million Jobs* was toward a “national budget” that would include both public and private expenditures, allowing the president to suggest, if necessary to ensure full employment, either “such nonspending devices as tax and credit incentives to stimulate both consumers and businessmen to spend more and therefore to create more jobs” or direct spending on public works projects or infrastructural investments.<sup>394</sup> Nonetheless, the ideological purity of *Sixty Million Jobs* presents an excellent portrait of the new understanding of democratic capitalism in the middle part of the twentieth century. The increasing social and cultural dependence of the United States on its national economy had created a new political and economic interdependence, as exemplified in the rise of consumerism and the government promise of full employment.

After World War II, the social welfare programs and economic stimulus pioneered under the New Deal would become a widely accepted part of life in the United



States. Moreover, the continued growth of the American economy left the majority thinking that the country must be doing something right. In 1954, Arthur Burns, the chairman of President Eisenhower's Council of Economic Advisers, would declare that "[i]t is no longer a matter of serious controversy whether the government shall play a positive role in helping to maintain a high level of economic activity."<sup>395</sup> Yet this widespread accord was not necessarily grounded on a shared philosophical outlook. Wallace had been rare, if not unique, in his ability both to spell out and to consciously accept the premises of this New Deal philosophy. Postwar thinkers and policy makers generally retained instead an uncomfortable agnosticism on the issue of the relationship between the Federal government and the domestic economy, while nonetheless endorsing many of the practices that this philosophy justified. That is to say, the popularity of the American welfare state, such as it is, outlived the conditions that gave rise to it.

The primary reason for the unwillingness to endorse a conception of the interdependence of politics and economics was the tension between the observed results of the successful domestic economy and the widely-held conviction that anything smacking of state economic intervention is a danger to the very "way of life" that characterizes the United States. This belief owed its force to the long shadow of the new international relations paradigm that divided up nearly the entire world into the Soviet-led "communist" sphere and the "free" region under the care of the United States. The high stakes of the Cold War led credence for many to the belief not only that the Soviets themselves might threaten the United States militarily, but that their communist ideology was itself a threat. As a result of these developments, Americans came to generally eschew state economic intervention in theory even while accepting it in practice. Daniel Bell pointed this out in 1965, in his book on *The End of Ideology*.

Few “classic” liberals insist that the state should play no role in the economy, and few serious conservatives, at least in England and on the Continent, believe that the Welfare State is “the road to serfdom.” In the Western world, therefore, there is today a rough consensus among intellectuals on political issues: the acceptance of a Welfare State; the desirability of decentralized power; a system of mixed economy and of political pluralism.<sup>396</sup>

In his 1976 *A History of Our Time*, Godfrey Hodgson referred to this mindset as “the liberal consensus.” Central to this pattern of ideas is the emphasis on economic growth, which “makes it possible to meet people’s needs out of incremental resources,” thus rendering “conflict over resources between classes...obsolete and unnecessary.”<sup>397</sup> Making a distinction between the “Left,” which had all but died out by the 1950s, and the “liberals,” whose philosophy had crowded all other alternatives on the mainstream intellectual stage, Hodgson defined the latter as follows.

[It is] the ideology that held that American capitalism was a revolutionary force for social change, that economic growth was supremely good because it obviated the need for redistribution and social conflict, that class had no place in American politics...In practice, the liberals were almost always more concerned about distinguishing themselves from the Left than about distinguishing themselves from conservatives.<sup>398</sup>

Even as the Left began to eclipse, conservatism had not yet arrived as a major player in American political thought. In the era defined by the Cold War, the assumptions of the liberal consensus dominated political discourse.

Furthermore, the widespread celebration of economic growth obscured the fact that a central component of the liberal consensus was the acceptance of the welfare state as an institutional component of American political life. Given the insistence that economic inequality was being eradicated by the miracle of economic growth, however, this widespread accord was more practical than it was ideological. The fact of the matter was that the historical circumstances had bequeathed to Americans a welfare state that they enjoyed, but not one that they could describe or defend philosophically. In 1971,

however, such a justification arrived. John Rawls's *A Theory of Justice* offered a closely-reasoned argument as to why justice demands a welfare state. The consensus view of democratic capitalism, Rawls seemed to argue, is not an intellectual half-way house between a just socialism and a free capitalism, but a fully defensible and articulate vision of society.

This landmark work begins with the premise that a theory of justice must justify *any* inequality that comes about as a result of human choices. This claim, however, does not imply that socialism is correct in holding that all goods should be distributed equally. Rawls recognized that the possibility of economic growth significantly alters the terrain of the political theory of distributive justice. In what is perhaps the book's master stroke, he notes that some inequalities, particularly the ones that increase the aggregate supply of accessible goods, make *everyone* better off. Since anything that improves all social positions will necessarily benefit those on the bottom of the socioeconomic ladder, Rawls argued for a conception of justice based upon what he called the "difference principle," the idea that "all social primary goods—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored."<sup>399</sup>

Because of the great benefits of economic growth, and the fact that such expansion is more likely to occur when people are rewarded for the ideas they have and the work that they do, many activities that lead to such unequal distributions will not violate these requirements. The only catch is that the inequality that typically results from a market economy, though it might improve the lot of many, does not usually leave every single person better off. In order to achieve this goal, then, it is morally requisite to redistribute some of the gains won by the most successful in order to improve the lot of those who did not come out so well. Under this scenario, both the heavily taxed success

story and the recipient of social welfare are better off than they would be had the inequality not been allowed in the first place. This necessary adjustment represents the institution of a welfare state.

The traditional philosophical discomfort with the welfare state is that, while it solves certain practical problems, it seems to violate the Liberal notion of individual rights, specifically the guarantee of property. Rawls's arguments suggest that social welfare policies need not do so, as those rights themselves are among the primary goods to be distributed by the society itself. Rawls asserted that, as social constructions, both government and economy are able to guarantee, support and regulate the ability to hold property because of specific historical actions. Far from being a natural right, our intuitions governing the notion of desert are entirely products of a social agreement.

It is perfectly true that given a just system of cooperation as a scheme of public rules and the expectations set up by it, those who, with the prospect of improving their condition, have done what the system announces that it will reward are entitled to their advantages. In this sense the more fortunate have a claim to their better situation; their claims are legitimate expectations established by social institutions, and the community is obligated to meet them. But this sense of desert presupposes the existence of the cooperative scheme; it is irrelevant to the question whether in the first place the scheme is to be designed in accordance with the difference principle or some other criterion.<sup>400</sup>

In other words, Bill Gates does deserve to be wealthy, but not because of his superior intellectual gifts, or even his hard work. He deserves to be wealthy because he had those qualities within a specific social context in which those particular gifts and actions were the ones that society has claimed it would reward. Had the social contract called for a different set of qualities and behaviors to be rewarded and punished, the prevailing moral intuitions would have been quite different, though equally legitimate.

*A Theory of Justice* gave philosophical justification to a vision of democratic capitalism that had already been generally accepted for nearly forty years. Yet one might ask if the liberal consensus still represents the dominant conception of American democratic capitalism. In particular, it could be argued that the end of the Cold War has brought a new paradigm upon us. This new phase of democratic capitalism would be defined by a new, populist conservatism whose origins reach back to the presidential campaign of Barry Goldwater and Howard Jarvis's 1978 anti-tax crusade that resulted in California's Proposition 13. Its greatest hero is Ronald Reagan, whose supply-side economic policies and "welfare queen" rhetoric seemed to signal the upcoming demise of the welfare state. Since Reagan left office, taxes have declined, corporate deregulation has accelerated and a Democratic president made good on his promise to "end welfare as we know it." With regard to the contemporary moment, it seems, American democratic capitalism can be defined by a demand for low taxes, the unraveling of the welfare state and a celebration of a Horatio Alger-like view of the economy, in which economic success is an indication of the moral virtue of the person who achieves it.

I would reject this characterization. Though the conservative trend is unmistakable, the relevant issue is whether this shift in political attitudes represents a repudiation of the liberal consensus, or an adjustment within it. Though admittedly all the evidence is not yet in, as of this writing I see only the latter. Economic growth is still a central political goal, the citizenry is capable of and willing to hold politicians accountable for low employment, and George W. Bush's recent attempt to privatize the New Deal's Social Security program crashed on the reefs of popular disapproval. The liberal consensus owes its impetus to a Cold War that no longer exists, and will inevitably be replaced as the dominant conception of democratic capitalism when new conditions create in the electorate a different set of needs. But for right now neither the end of the

Cold War nor another politically significant event—the attacks of September 11—seems to have resulted in a fundamental reconceptualization of the relationship between politics and commerce in the United States.

This dissertation has two purposes: one somewhat more scholarly and the other a bit less so. The first is to raise the question of the relationship between democracy and capitalism. Both systems have been in place, at least embryonically, since the Jacksonian era, and the contradiction between them is not terribly difficult to discern, yet this issue has attracted little attention. One can speculate as to the causes of this phenomenon: the relative contentment of the American people, the influence of Liberalism in the United States or perhaps the inability to imagine another alternative. Whatever the reason, Americans either do not know or do not care about the strains that democracy and capitalism can place upon each other.

Thus I hope to advocate for a consideration of the problem of democratic capitalism as much as my own particular solution to it. Confusion over the competing obligations engendered by the national commitment to these two ideologies manifests itself in contemporary political and social controversies involving every level of government: the use of eminent domain for private economic development, national health insurance, municipal subsidies of sports teams, family-friendly employment legislation, local smoking bans in bars and restaurants, immigration policy, state-funded education vouchers, and many more. With regard to these and countless other controversies, it is simply impossible to implement policies in accordance with the will of the people—whatever that may be—while at the same time respecting absolutely the individual's right to property and the determinations of the market. At the same time, however, there is much to value about the institutions, practices and ideas of modern

capitalism, not the least of which is its ability to provide an environment for expressions in opposition to potentially oppressive government policies. The increased recognition of the tensions inherent in American democratic capitalism, as well as the malleability that has historically characterized the nation's political economy, might lead to a framework that could draw attention to some important issues that are currently being neglected—such as the prevalence of “corporate welfare”—or bring about a decisive resolution to needlessly intransigent problems—like those surrounding lobbying and campaign finance reform.

The dissertation's second goal is to offer a conceptual alternative to the increasing prominence of libertarianism in the United States. A philosophy that emphasizes the tendency of free enterprise to increase the realm of individual liberty, libertarianism also celebrates the ability of the market to promote social justice, narrowly understood as the distribution of property according to the aggregate of individual desires. On this interpretation, the extent to which a society promotes this justice is exactly the extent to which it forbids other entities, particularly government, from tampering with the effects of the market. Unlike many conservatives, libertarians apply this philosophy consistently in also opposing other, non-economic intrusions into personal liberty: they categorically oppose drug criminalization, legal restrictions on private sexual expression, many public safety ordinances, and the like. Though comparatively few figures of political or intellectual prominence identify themselves as libertarians, from my admittedly anecdotal perspective, this outlook is becoming increasingly prevalent in the United States. The Libertarian Party is the third-largest and fastest-growing political party in the country. As an college instructor in two subjects at multiple institutions, I teach several hundred students a year; if there is a thread that unifies their varying political commitments, it appears to me to be an often unstated (or unrecognized) conviction that an individual

should, as much as possible, be left alone to pursue his or her own goals in whatever manner strikes that person as appropriate.

Libertarianism offers much to those on the left and the right: its emphasis on the market and individual property appeals to conservatives, while its opposition to the criminalization of such things as homosexuality or drug use is attractive to the socially liberal. Yet at its core, the movement does not advance a new conception of government, as much as it opposes government itself. Though philosopher Robert Nozick correctly pointed out that the libertarian must answer the question as to why anarchism is not the real object of the philosophy's commitments, his attempt to offer a compelling response must ultimately be judged a failure.<sup>401</sup> Libertarianism cannot adequately account for the character, existence or desirability of communities, much less governments.

Government is, or at least can be, an expression of the values that a society holds, not as the sum total of its individuals, but in its capacity as a representation of the community itself. And no system of government represents this promise more fully than the democratic one. Thus libertarianism is, in its essence, the rejection of democracy. Yet if we take its message as a warning rather than a challenge, it can provide a useful corrective to the excesses that often plague a democratic society such as ours. The American people enjoy the benefits of their market economy, and as long as this is true, political or philosophical attempts to alter its basic character will fail. At the same time, successful democratic governance requires that sovereignty remain with the people through the organ of their government, rather than that it be ceded to an ahistorical human liberty. It is the continual refinement and application of these two insights in light of changing historical conditions that has allowed for the success of American democratic capitalism.



## Notes

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